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U. S. *Emergency board* (*Southern Pacific company, 1945*)

Report to the President by the Emergency board appointed March 28, 1945, from National railway labor panel, pursuant to Executive order 9172 issued May 22, 1942, and subject to section 202 of the Stabilization extension act of 1944 (Public law 383, 78th Congress) to investigate the facts of a dispute between the Southern Pacific company (Pacific lines) and certain of its employees represented by the Brotherhood of locomotive engineers respecting wage increases and certain proposed changes and additions to its rules, to adjust the disputes on the basis of the

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U. S. *Emergency board* (*Southern Pacific company, 1945*)
Report to the President by the Emergency Board ... (Card 2)

facts developed and make a report thereon to the President. July 12, 1945. Washington, U. S. Govt. print. off., 1945.

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Signed: James H. Wolfe, chairman, Gordon S. Watkins ... [and] A. G. Crane.

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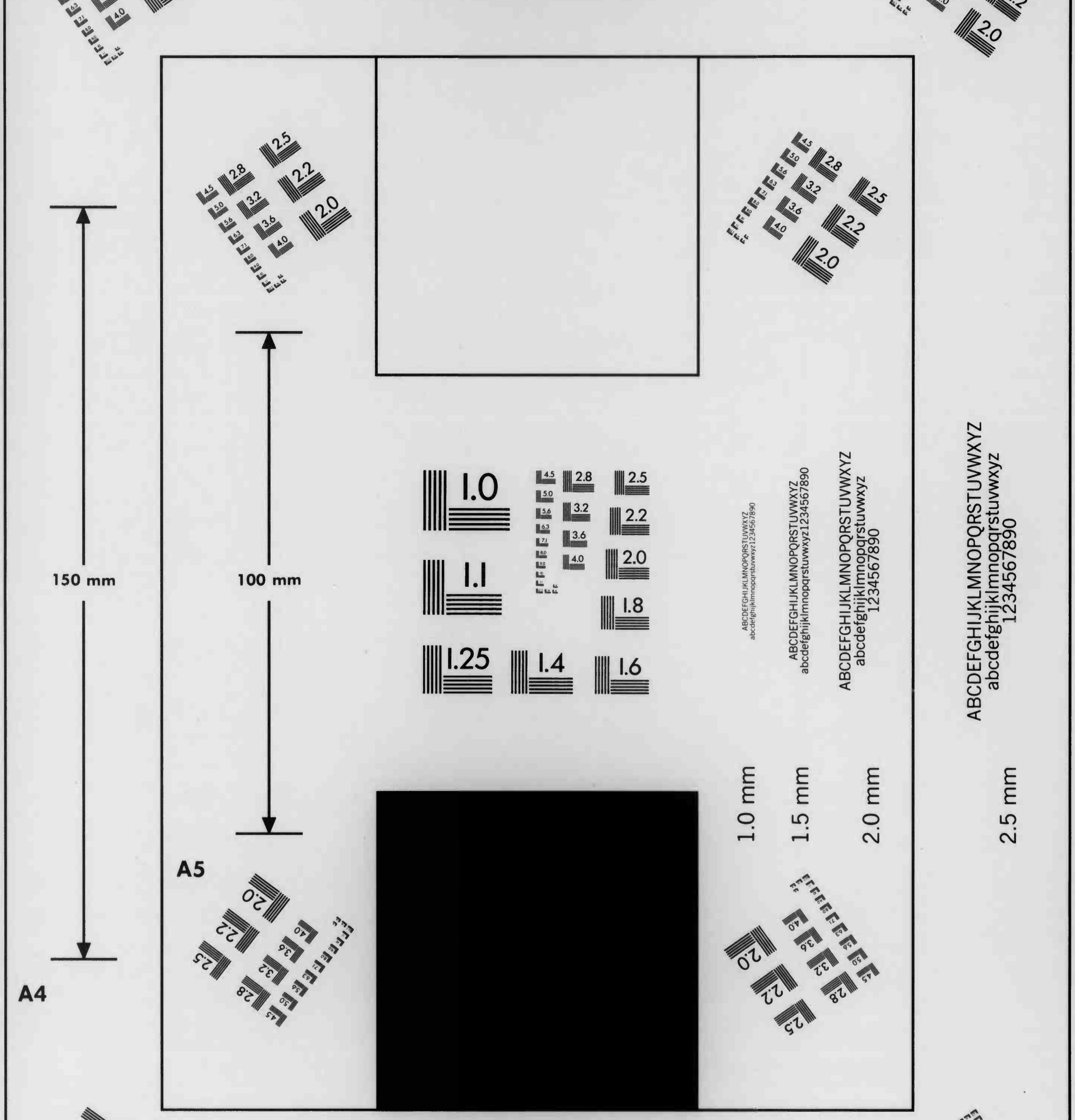

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U.S. EMERGENCY BOARD.

REPORT TO THE PRESIDENT ON THE SOUTHERN PACIFIC COMPANY DISPUTE, JULY 12, 1945.

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REPORT
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD

*

Appointed March 28, 1945
From National Railway Labor Panel

Pursuant to Executive Order 9172
Issued May 22, 1942, and subject to
Section 202 of the Stabilization Extension Act of 1944
(Public Law 383 — 78th Congress)

To investigate the facts of a dispute between the
Southern Pacific Company (Pacific Lines)
and
certain of its employees represented by the Brotherhood
of Locomotive Engineers respecting wage increases
and certain proposed changes and additions to
its rules, to adjust the disputes on the
basis of the facts developed and
make a report thereon to the
President.

*

July 12, 1945

UNITED STATES
GOVERNMENT PRINTING OFFICE
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LETTER OF TRANSMITTAL

SAN FRANCISCO, CALIF., *July 12, 1945.*

The PRESIDENT,
The White House,
Washington, D. C.

MR. PRESIDENT: The Emergency Board selected March 28, 1945, from the National Railway Labor Panel by the Honorable H. H. Schwartz, Chairman of said Panel, in accordance with Executive Order 9172 issued May 22, 1942, and subject to the provisions of that Order and to Section 202 of the Stabilization Extension Act of 1944 (Public Law 383-78th Congress) to consider Cases A-990, A-1084, A-1210, A-1370, A-1371, A-1516 and A-1594, has the honor to submit its findings and recommendations in respect to the unadjusted disputes existing between the Southern Pacific Company (Pacific Lines) and the Brotherhood of Locomotive Engineers.

The matters in dispute were duly heard by the Board beginning April 18, 1945, at 10:00 o'clock a. m. There were in fact twenty-seven (27) separate requests for changes in existing rules or for new rules, each independent of the others, so there were in fact twenty-seven (27) cases rather than seven (7).

The Board has carefully considered all the contentions of the parties and in this report sets forth the issues, the position in each case of each of the parties, and the discussion of the issues and arguments of the parties, ending with the recommendation in each case. A summary of these recommendations is also for convenience attached to this letter of transmittal.

The hearings, and the reasoning in support of the recommendations as revealed by the record, were conducted and made in the light of standards established by and pursuant to law for the purpose of controlling inflationary tendencies. None of the Requests, except Item 14 of Case A-1371, involved an increase of rates. That request was denied, because of the opinion of the Board that it was contrary to standards established to control inflationary tendencies.

Case A-990 involved a reclassification and not a change in rates.

The Board awaits your further instructions.

Respectfully,

JAMES H. WOLFE, *Chairman.*
GORDON S. WATKINS, *Member,*
A. G. CRANE, *Member.*

NOV 5 1945 PCR

SOUTHERN PACIFIC COMPANY (Pacific Lines) *vs.* BROTHERHOOD OF LOCOMOTIVE ENGINEERS

SUMMARY OF RECOMMENDATIONS

Note: The gist and not the exact wording of the requests are used to reflect the Board's action.

The Board recommends:

CASE A–990

That valley freight rates be paid engineers for handling cars between A, B, and C units to Butte Street yard, operating via the East Bank Line or Alameda Street, and that said rates be paid from the first pay period after July 18, 1941. (Pages 18 and 21)

CASE A–1084

That request relieving engineers of duty to deliver train orders except in cases of emergency be not adopted but without prejudice to a request for a rule which would relieve engineers from said duty where the message could have been delivered by a station operator. (Page 26)

CASE A–1210

That request for re-establishment of Mojave as a terminal be not adopted without prejudice, however, to renew it, if after a fair period of trial after the return of normal peace conditions, the average hours on duty over a period, taking in both summer and winter conditions, are not reduced below the average from October 1943 to February 1945 at least two hours. (Page 41)

CASE A–1370

Item 1.

That request for reduction of helper engines to two in number and for a minimum speed of 20 m. p. h. through tunnels, suitable respirators and smoke deflectors be not adopted. (Page 59)

Item 2.

That request that Port Costa be re-established as an on-and-off-duty point be not adopted. (Page 65)

CASE A–1371

Item 1.

That request that engineers be used to "messenger" engines be not adopted. (Page 69)

Item 2.

That request for lunch period for yard engineers be at point accessible to restaurant be not adopted. (Page 73)

Item 3.

That there be added to Article 35 provision that a copy of decisions rendered by General Manager in case claim is referred to him for interpretation or application of rules be furnished General Chairman of Committee, whether such reference be before or after action by division officers instead of request as made. (Page 78)

Item 4.

That request General Chairman be furnished with copies of instructions pertaining to computing time of engineers be adopted with word "hereafter" inserted before word "issued". (Page 81)

Item 5.

That request road engines in yard service be equipped with yard engine tenders be not adopted. (Page 86)

Item 6.

That request that Company provide adequate wash, change and writing facilities at terminals be not adopted, but suggests that joint survey committee to make inspection and evolve plans throughout property be formed. (Page 89)

Item 7.

That request engine part ahead of cab and inside of cabs be cleaned and that engines be not run until paint is dry be not adopted. (Page 92)

Item 8.

That request seat box, arm rest and back cushions be furnished and kept in good condition, and cabs conditioned yearly for winter use be not adopted. (Page 95)

Item 9.

That request regarding investigation and correction of hard-riding engines be adopted with additional provision for decision of mutually selected referee if there develops a difference of opinion as to whether engine is hard riding. (Page 99)

Item 10.

That request Management cooperate with Local and General Chairman by furnishing check of mileage of individual engineers on request be not adopted without prejudice to the negotiation of an agreement designed to accomplish the limited purposes mentioned in the Report. (Page 106)

Item 11.

That request for rule requiring headlights and cab lights of certain specifications be not adopted. (Page 108)

Item 12.

That request that no person defective in hearing, sight or color perception, etc., be not promoted or hired, and for specifications in Field Tests after hospital tests in re-examinations, and that engineers be paid for time lost in taking same, be not adopted. (Page 119)

Item 13.

That rule providing for appeal to doctor's board in case engineer removed on account of physical condition on application of rejected engineer, or his designated representative, and providing for selection of said board and payment of cost of same be adopted, instead of rule as requested. (Page 125)

Item 14.

That request for minimum daily guarantee for all classes road and yard service be not adopted, but without prejudice to reapply for such rule after the duration, or when Little Steel Formula is modified or eliminated. (Page 133)

Item 15.

That request maximum age limit of engineers for hiring be 56 years be not adopted. (Page 136)

Item 16.

That request requirement two years' experience in actual road service be reduced to one year as prerequisite for engineer, passenger service, be not adopted. (Page 140)

Item 17.

That request approval General Chairman and General Manager be obtained when engineers on two districts desire to exchange district rights be not adopted. (Page 148)

Item 18.

That request year's leave of absence be extended for yearly periods on approval General Committee of Adjustment, Brotherhood Locomotive Engineers, and then only to fill elective or appointive public positions, be not adopted. (Page 154)

Item 19.

That request for payment of earnings engineer would have made if found wrongfully dismissed or discharged with a minimum of $8.79 per day for time lost on such account be adopted. (Page 160)

Item 20.

That request engineers after six hours without opportunity to obtain hot meal notify Dispatcher when reasonably possible of intention to eat without power of Dispatcher to countermand intention, be not adopted. (Page 164)

CASE A–1516

That rule providing that engineers run around through no fault of their own be allowed 50 miles for each runaround and stand first-out be adopted instead of rule now existing and in place of rule as proposed by the Brotherhood; that request that failure to deadhead engineer regardless of whether there was sufficient or available train service gives such bypassed engineer same earnings as engineer who performed service, be not adopted. (Page 173)

CASE A–1594

That request new freight pool be established to cover interdivision run Western-Coast Districts for runs San Francisco-Oakland; San Francisco-Tracy, be not adopted. (Page 184)

REPORT OF EMERGENCY BOARD SELECTED MARCH 28, 1945 FROM THE NATIONAL RAILWAY LABOR PANEL, PURSUANT TO EXECUTIVE ORDER 9172 DATED MAY 22, 1942 AND SUBJECT TO SECTION 202 OF THE STABILIZATION EXTENSION ACT OF 1944 (PUBLIC LAW 383-78th CONGRESS)

To investigate the facts of a dispute between Southern Pacific Company (Pacific Lines) and certain of its employees represented by the Brotherhood of Locomotive Engineers respecting wage increases and certain proposed changes and additions to its rules, to adjust the disputes on the basis of the facts developed, and make a report thereon to the President at the earliest possible date.

PREFATORY

WHEREAS the several disputes between the Southern Pacific Company (Pacific Lines) and certain of their employees represented by the Brotherhood of Locomotive Engineers (designated by the National Mediation Board as Cases A-990, A-1084, A-1210, A-1370, A-1371, A-1516, and A-1594) have not been adjusted under the provisions of Sections 5, 6, 7, 8 and 9 of the Railway Labor Act, as amended, and

WHEREAS the duly authorized representatives of the employees have notified the Chairman of the National Railway Labor Panel of the failure of the parties to adjust said disputes and of their desire to avoid the taking of a strike vote and the setting of a strike date, and

WHEREAS it is the judgment of the Chairman of the National Railway Labor Panel that each said dispute is such that if unadjusted, even in the absence of a strike vote, it may interfere with the prosecution of the war;

NOW, THEREFORE, by virtue of the authority vested in me by Executive Order 9172, and subject to the provisions of that Order and to Section 202 of the Stabilization Extension Act of 1944 (Public Law 383–78th Congress), I hereby select James H. Wolfe, Gordon S. Watkins and A. G. Crane, members of the National Railway Labor Panel, to serve as Emergency Boards in each said dispute, to commence investigation at 10 a. m. on Wednesday, April 18, 1945, in Appraisers Court Room, New Appraisers Building, Sansome and Washington Streets, San Francisco, California.

In each Case, A-990, A-1084, A-1210, A-1370, A-1371, A-1516 and A-1594, said Emergency Board shall make separate findings and recommendations, and when necessary, a certification as required by the provisions of Section 202 of the Stabilization Act of 1944.

[S] H. H. SCHWARTZ, *Chairman,*
National Railway Labor Panel.

MARCH 28, 1945.
(P. B. 8-45)

The Board, thus constituted, convened in San Francisco on April 18, 1945, at the place specified in the designation.

Testimony was taken in the cases in the following order: A-990, A-1084, A-1210, A-1370—Items 1 and 2; Cases A-1516 and A-1594, Case A-1371, Items 1 to 20, both inclusive.

The appearances in all the cases for the Carrier and the Brotherhood were the same. They were as follows:

For the Brotherhood:

GEORGE N. NAUS, *Attorney for the General Committee of Adjustment*

P. O. PETERSON, *General Chairman of the General Committee of Adjustment of the Brotherhood of Locomotive Engineers*

G. W. LAUGHLIN, *Senior Assistant Grand Chief of the Brotherhood of Locomotive Engineers*

For the Carrier:

BURTON MASON, *Assistant General Attorney*

J. G. TORIAN, *Manager of Personnel*

L. B. FEE, *Assistant Manager of Personnel*

On the threshold of the hearing, Mr. Eugene Prince and Mr. Herbert Korte appearing for the Brotherhood of Locomotive Firemen and Enginemen presented a motion for leave to intervene in the proceedings with respect to certain matters in which said Brotherhood conceived it had an interest. The petition for intervention was directed especially to Items 12, 13, 17 and 18 of Case A-1371 and "any other matters which may arise herein affecting the interests of the intervenor."

The Brotherhood of Railway Engineers strenuously objected to the proposed intervention. The Board refused to permit the intervention, but informed the representatives of the Firemen's Organization that if at any time that Organization conceived that any request of the Engineers if recommended would be detrimental to the interests of the Firemen, such fact could be suggested to the Board, and at the invitation of the Board in pursuance of its investigatory powers, the Board would permit argument; furthermore, if there were witnesses which the Firemen might desire to have the Board hear, the Board might call such witnesses and use the representatives of the Firemen as a facility to examine such witnesses or adopt the questions of such representatives in order to conduct such examination; likewise as to cross examination.

Subsequent developments under this ruling took place when Item 12 of Case A-1371 came up for hearing. At that point the Engineers refused to remain in the hearing room while the Board gave the Firemen the opportunity to examine witnesses and present arguments. (See History of Case A-1371, which appears at the beginning thereof.)

CASE A–990

The dispute involved in Case A-990 had its genesis in a formal notice served by the Brotherhood on the Carrier dated October 15, 1940. While there is nothing in the evidence to show it, apparently a further notice was served on the Carrier on February 15, 1941, (See Ex. "B") as indicated by the phrase: ". . . in accordance with submission made to the Carrier October 15, 1940", contained in the apparent later notice. The steps constituting the progressing of this dispute from invocation under the Railway Labor Act by the said letter of October 15, 1940 to date of appointment of the Emergency Board will be set out hereafter so far as relevant when the matter of retroactive effectiveness is considered.

The Request reads as follows:

> Request that freight rates be paid engineers, Los Angeles Yard, for handling cars between A, B, and C units to Butte Street Yard, operating via the East Bank Line or Alameda Street, in accordance with submission made to the Carrier October 15, 1940. Freight rates referred to are covered by Article 2, Section 2, Engineers' Agreement. (See Ex. "B")

PHYSICAL DESCRIPTION OF YARD TERRITORY AND OPERATIONS INVOLVED IN DISPUTE

Involved in the instant request are yard engineers handling cuts of cars in drag service from A, B, and C units to the Butte Street Yard, and cars destined to the Vernon industrial area, and loads and empties out of that area to A, B, and C units, operating either via the East Bank Line (Union Pacific tracks) or the Alameda Street line. Said engineers are currently paid regular yard rates.

The A, B, and C units of what is known as Taylor Yard and the Butte Street Yard are all within Los Angeles Terminal Yard limits. (See Ex. 2) The two Yards are connected by main line tracks by way of East Bank over Union Pacific tracks and by way of the main line track of the Southern Pacific Company over Alameda Street. (Ex. 2) From time to time the yard limits of the Los Angeles Terminal have been extended, but this haul from the A, B, and C units of the Taylor Yard to Butte Street Yard and vice versa is within the limits of the Yard as it was constituted on January 1, 1926, a fact which has significance in this case, as will later appear.

The distance from the center of "A" Yard to the center of the Butte Street Yard via the East Bank Line is seven (7) miles and to Firestone Park is ten and nine-tenths (10.9) miles The distance between the center of "A" Yard to the center of the Butte Street Yard via Alameda Street is five (5) miles.

The "A" Yard is known as the receiving yard, although trains are also received in other portions of the Taylor Yard.

The "B" Yard is known as the Classification Yard.

The "C" Yard is used to make up trains.

Cars switched into "B" Yard are coupled onto by a yard engine and the air connected in on this cut of cars. The East Bank Line (Union Pacific Railroad) lies east of the official channel of the Los Angeles River. This line consists of double track, automatic block signals, inter-locking signals, extending to the Ninth (9th) Street Junction where there is another inter-locking signal which diverts trains to the Redondo Junction. From there trains go in an easterly direction toward the Butte Street Yard, the staff system being used to facilitate this movement over a single track. Trains are then handled in the Butte Street Yard as shown on Exhibits 2 and "E" in the vicinity of Mile Post 485. At Ninth Street the Union Pacific main lines continue on in an easterly direction, as shown by the yellow marking on Exhibit 2. At Ninth Street, where there is an electrically controlled switch, trains of the Southern Pacific go to the Redondo Street Junction and continue in a westerly direction to the Butte Street Yard. This Yard is west of the river. Its actual location is in the vicinity of Santa Fe Avenue and Alameda just south of Washington Street.

The rapid growth and development of the Los Angeles region necessitated an expansion of terminal facilities and yard limits. The Carrier submitted datailed maps showing yard limits as of January 1, 1926 and the extensions as of December 20, 1933. The yard limits of 1926 can be considered as an inner area surrounded by a band of added trackage and for convenience described as an outer zone. The inner area embracing the trackage within the yard limits of January 1, 1926 in a north and south direction, extended from Mile Post 489.07 on the south to Mile Post 477.2 on the north or 11.87 miles. By December 20, 1933 these limits had become Mile Post 489.91 on the south to Mile Post 471.19 on the north, or 18.72 miles. Thus the north and south limits had been extended 6.85 miles.

Likewise, on the east and west axis the mileage from Naud Junction on the west to the eastern yard limits in 1926 was extended from Mile Post 482.46 on the west to Mile Post 486.81 on the east, or 4.35. By December 20, 1933 these limits had become Mile Post 482.46 on the west and Mile Post 488.69 on the east, or 6.23 miles. Thus the yard limits to the east had been extended 1.88 miles.

I

THE ISSUE

The issue in the instant case is whether the drag service from the A, B, and C Yards to Butte Street heretofore acknowledged to be within the general scope of yard and switching operations, should hereafter be otherwise redefined and reclassified and, as a consequence, the wage rate schedule applicable to engineers in valley road freight service be applied to said operations, (Tr.327); whether the drag service as above described in the Carrier's Los Angeles Yard is similar to that in any other yard of the Carrier for which valley freight rates are paid for service there, making that service more nearly like road freight service, consequently changing said drag service from the yard to the road classification.

The disputants themselves are not in complete agreement relative to the substance of the central issue. The Carrier regards the instant request as a demand for a wage increase under the guise of reclassification of certain yard services; the Brotherhood conceives the request to be for a reclassification of certain services in the Los Angeles Yard, alleging that comparable situations at Portland, Sacramento, San Francisco, Oakland, Stockton, Fresno, Tracy, Roseville and Sparks are paid valley freight rates according to Article 2, Section 2 of the Engineers' Agreement. Looked at from either of these points of view, the basic issue is one of reclassification of services, since such reclassification necessarily must precede wage adjustments incident to the request. (Tr. 102, 124)

II

THE POSITION OF THE PARTIES

1. *The Employees' Position:*

In asking that certain yard drag service in the Los Angeles Terminal be reclassified as freight service and be paid the valley freight rate specified in Article 2, Section 2 of the Engineers' Agreement, the Brotherhood contends that it is merely seeking the application of procedures already established by the Carrier in certain comparable situations.

The Organization contends that when an engineer handles drags of cars from A, B, and C units to the Butte Street Yard, or vice versa, either via the East Bank Line (Union Pacific main track) or over the Southern Pacific's main track through Alameda Street, he assumes all of the responsibilities that are assumed by an engineer in freight service on a main line. The drags include up to 48 cars; the air brake system is "cut in", flag protection is required, as for a main line freight or passenger train; a block signal system governs operations, as for any main line freight train; and operations are through interlocking plants in the same manner as in any through freight service (Tr. 131-132). In brief, the Organization regards this work as road service calling for the pay rates which that service by mutual agreement commands.

The Organization further contends that the rate of pay for the class of service involved in the instant request has already been established by agreement with the Carrier. Case No. 176, Railway Board of Adjustment No. 1 (See Ex. "C"), is pointed out as evidence of that fact. That case involved an operation in the San Francisco terminal of the Southern Pacific which it is contended is in effect identical or similar to the operation in Los Angeles. In that case, the Railway Board of Adjustment No. 1 sustained the claim for the valley freight rates for engineers operating in the San Francisco Terminal between the passenger station at Third and Townsend Streets and the Bayshore Yard. Extension of terminal facilities and yard limits caused the development of the Bayshore Yard. By that settlement and award it is claimed there was established freight rate payment for drag or transfer service. Therefore, the Organization contends the service at the Los Angeles Yard, alleged to be identical to that at San Francisco, should receive the freight rate. (Tr. 135-136)

April 24, 1936, an agreement was concluded covering the Portland Division and involving certain services performed by engineers between Brooklyn and Albina and Brooklyn and the Northern Pacific Terminal, for which transfer rates, which are the same as the valley rates, were to be paid. Through freight rates were thus provided as specified in Article 2, Section 2 of the Engineers' Agreement (Exs. "A" and "C"). By agreement transfer (freight) rates were approved for locomotive engineers performing service in connection with the handling of cargoes of freight to and from Stockton Port within Stockton Terminal. (Ex. "C", Tr. 141-142)

The Organization further argues that the Carrier by agreement already pays valley freight rates not only for transfer service between its own road and the road of a foreign Carrier, but also for movements between units within its own yards. In support of this position it refers not only to the San Francisco-Bayshore situation already mentioned, but to the provisions of Article 11, Section 3, sub-sections (e) and (f) of the Engineers' Agreement. The general purpose of said section is to define switching limits. Under its provisions (b) and (d) location of yard limit boards established as of December 20, 1933, fixes switching limits, and engineers in yard service who are required to go beyond the location of yard limit boards as they stood January 1, 1926, but not beyond the location of the yard limit boards as of December 20, 1933, shall be paid through freight valley rates, according to the class of engine used, for each tour of duty they are required to perform the work described.

Sub-sections (e) and (f) make the provisions of sub-section (d) applicable to engineers in yard service at Sparks, who are required to go to Reno within Sparks yard limits, and to engineers in yard service at Roseville, who are required to make the trip Roseville to Rocklin. Here, the Organization urges, are situations comparable to that which presently exist at Los Angeles (Tr. 217-219). Between Reno and Sparks Terminal is a distance of about two and one-half miles, double-track, main-track operation. The distance between Roseville and Rocklin is about 4 miles, main-track operation with double track (Tr. 219-220).

The Organization also cites the Mediation Agreement (Case A-230, Ex. "C") as covering a situation in the Oakland Terminal which it is claimed is comparable to that now under consideration at Los Angeles. That Agreement provided that valley freight rates shall be paid engineers in yard service in the Oakland Terminal. Effective November 16, 1937, valley rates of pay to engineers in yard service performing certain operations were provided for as follows:

(a) Movements in either one or both directions which covers the entire distance between Emeryville and Seaver Avenue Junction switch located approximately 34/100ths of a mile east of Stege. (Approximately six (6) miles, Tr. 231.)

(b) Movement in either one or both directions which covers the entire distance between East Oakland and Elmhurst. (Approximately five (5) miles, Tr. 231.)

(c) Movement in either one or both directions which covers the entire distance between West Oakland train yard and Mastik Junction, Alameda. (Approximately eight (8) miles, Tr. 231.)

That Agreement further provided that when valley district freight rates are applicable to engineers under the agreement on any shift on any day, such rates shall be applied to the entire shift, (Ex. "C", Tr. 230-232).

Relative to these Oakland Terminal services the Organization points out two additional matters: (1) the Mediation Agreement in that instance was concluded many years after the operations had been established; and (2) the movements above described and set out in the Agreement are not solely transfer movements, but merely the handling of cars from one point in the Southern Pacific's own Oakland Terminal to another point in that same Terminal, in a majority of cases over the main tracks.

The Organization indicated also that upon conclusion of the said Mediation Agreement, General Chairman P. O. Peterson, November 8, 1937, wrote Mr. A. J. Hancock, Assistant General Manager of the Southern Pacific Railroad, calling the latter's attention to similar situations involving drag services at Los Angeles and at Fresno. No reply to this communication was received by the Brotherhood, (Ex. "C"). The Organization contends that the provisions of Article 25, Section 4, of the Engineers' Agreement applies. This Section reads:

> Where settlements are made in adjustment of certain claims, other claims that are of a similar nature can usually be adjusted on the same basis, and so far as similarity of conditions will permit, this will be done.

It is contended that the request for valley freight rates under the situation at Los Angeles is similar to the situation at Oakland, (Tr. 233-234; also Engineers' Agreement, effective May 1, 1942, 71). There has been an inordinate delay, the Organization insists, (Tr. 234). Consequently, retroactive pay is asked to date of Local Chairman White's letter to Mr. D. J. Russell, Superintendent of the Southern Pacific Company, dated at Los Angeles, June 12, 1940. (Tr. 235; also Ex. "C".)

Relating conditions in the Los Angeles Terminal involved in the instant request to the conditions set forth in the allegedly precedent cases cited above, the Organization insists the movement in one or both directions covering the distance between A, B, and C units and the Butte Street Yard is equivalent to a transfer movement. This movement is said to be similar in every respect to transfer operations between the Southern Pacific Yard in Los Angeles and such interchange roads as the Pacific Electric, the Santa Fe, the Los Angeles Junction Railroad, and the Union Pacific, for which by agreement valley freight rates are paid. Similarly, it is contended the situation at Los Angeles is comparable to that at Fresno where two yards are connected by main track and where engineers in yard service get valley freight rates for operations between the two yards. (Tr. 274) Therefore, it is urged when compared with the situations at San Francisco, Oakland, Fresno, Reno, or Roseville-Rocklin, the situation at Los Angeles is similar and calls for the transfer or valley freight rate of pay.

2. The Position of the Carrier:

The Carrier is firmly of the opinion that the Employees' request completely disregards the essential differences between the duties

and responsibilities of engineers in yard and switching service and those engaged in road service. The work of the former is confined within certain defined and agreed-upon limits, and consists of switching, assembly, movement and distribution of certain cars within said limits. The lesser rate of pay scheduled for yard service compared with that for road service is indicative of the differences in the type of work, responsibilities and duties of the two classes of positions. Consequently, the payment of valley freight rates for yard service involved in the Employees' request would necessarily be unjust and would occasion severe dislocations in the wage rate structure already agreed upon between the Carrier and the Organization.

The Carrier urges that the Agreement of December 20, 1933, cannot properly be urged in support of the request. The substance of said Agreement was set out in the position of the Organization above.

In accordance with the provisions of said Agreement, there were established two zones to cover engineers in yard service within the switching limits of the Los Angeles Yard. The *first* or *inner* zone (colored red and brown in map, Exs. 2 and 3) was within the switching limits as of January 1, 1926. In this zone the rates of pay to engineers in yard service are the regular yard rates set forth in Article 11, Section 1, of the Agreement covering engineers, page 33. The *second* or *outer* zone (colored green on the map, Exs. 2 and 3) extended between the outer limits of the first or inner zone to the switching limits defined by the location of yard limit boards as of December 20, 1933. When required to operate beyond the limits of the first or inner zone, but not beyond the outer zone, engineers are paid for their entire tour of duty the valley freight rates, according to the class of locomotive used. (Ex. 4). In addition to valley freight rates of pay to engineers for yard service performed within the limits of the second and outer zone in the Los Angeles Yard, by reason of the Agreement of December 20, 1933, the same rates are also paid to engineers performing service defined by Agreement or recognized as transfer service in that terminal. For example, transfer service rates are paid for work in such transfer and interchange movements as the Santa Fe and Union Pacific Yards, the Los Angeles Junction Railway Yard, and the Union Stock Yards.

Train movements involved in the request between the A, B, and C, and the Butte Street units of the Carrier's yard at Los Angeles via either Alameda Street or the East Bank Line are within the limits of the *first* or *inner* zone of the Los Angeles Yard as those limits stood on January 1, 1926. The Carrier urges that within these limits the Agreement of December 20, 1933, did not disturb or affect the application of yard rates of pay to engineers in yard service.

Nor, the Carrier insists, can the request be sustained on the basis that the car movements involved constitute transfer service in the established use of that term. As defined by Agreement between the Carrier and the Organization (dated August 7, 1928) transfer service consists of the interchange of cars between the Carrier's and foreign line yards over the main track of foreign lines on which this Carrier's right to operate is restricted to the interchange of cars only. Transfer service as thus defined is, the Carrier insists, not the same type of service as the service of moving of cars between the various units of the same yard totally owned by the Carrier, whether such cars are moved either on its exclusively owned track, or on jointly operated track which, for operating purposes, is constructively the Carrier's track.

The request is not, the Carrier contends, supported by precedents allegedly established by and through certain settlements presently in effect, as the Brotherhood insists, namely: decision of Railway Board of Adjustment No. 1 in Case No. 176; decision of Railway Board of Adjustment No. 1 in Case No. 1281; mediation settlement in Case No. A-230.

The disputes covered by Cases Nos. 176 and 1281 of the Railway Board of Adjustment No. 1 were, the Carrier contends, based entirely upon the Carrier's action in substituting engineers in switching service for engineers in road service, and in substituting yard switching rates of pay for local road rates of pay for work of hauling cars between San Francisco and Bayshore and between Bayshore and South San Francisco. This situation, the Carrier affirms, is not in any manner analogous to the one present in Los Angeles. At Los Angeles there was no absorption by engineers in yard switching service of work previously performed by local road crews, as was the case in the San Francisco-Bayshore and Bayshore-South San Francisco. (Tr. 337-338.)

Case A-230 involved a mediation settlement issuing from a controversy which developed out of the extension of the Oakland switching limits. Yard limits and yard limit extensions are detailed in Exhibit No. 5; said Exhibit reveals that in December, 1910, the switching limits of the Oakland Yard were extended in an easterly direction from Mile Post 7 to Mile Post 15.13 on the line to Niles, and in December, 1914, to Mile Post 15 on the line to Santa Clara. Prior to the extension of said switching limits eastward, road engineers receiving local road rates performed the necessary work east of Mile Post 7.

In December, 1910, the northerly switching limits of the Oakland Yard were located at Mile Post 8.55. In September, 1912, these limits were extended in a generally northerly direction to Mile Post 15, including the City of Richmond; and in March, 1913, they were further extended to Mile Post 17.351. Prior to the extensions of the said switching limits road engineers performed necessary work north of Mile Post 8.55 and were paid road rates for such work.

The Carrier contends that the Agreement of December 20, 1933, froze the switching limits of the Oakland Yard in their present locations; that the Oakland situation was similar to that which existed between Bayshore and San Francisco and culminated through mediation in the settlement contained in Case No. A-230 (Ex. 6); that said settlement consummated by Case A-230 provided for the payment to engineers in yard switching service of road rates of pay when required to make a movement in either one, or both, directions covering the entire distance between Emeryville and Seaver Avenue Junction (M. P. 13.44 approximately); the entire distance between East Oakland and Elmhurst, and between West Oakland train yard and Mastik Junction, Alameda, (M. P. 12.77).

The Carrier contends that there is no analogous relationship between the Oakland situation detailed in Case No. A-230 and the circumstances at Los Angeles. The reasoning advanced concerning the San Francisco-Bayshore cases (Cases Nos. 176 and 281 of Railway Board of Adjustment No. 1) is also advanced in the instant situation, namely, that both the Oakland and the San Francisco-Bayshore settlements adjusted controversies developing out of the absorption by engineers in yard switching service of work previously performed by road engineers for which the latter were paid road rates of pay.

In short, the Carrier contends that in the final analysis the Brotherhood's request actually involves an increase in the wage rates for engineers in yard switching service for the performance of work which has long been recognized and classified, as it is at present, as yard switching service; that since the A, B, and C units were first constructed and placed in operation, movements between them and the Butte Street Yard via Alameda Street have been performed by engineers in switching service at yard rates of pay; that movements over the East Bank (Union Pacific) Line have been made ever since the Carrier acquired joint operating rights over that line in 1923; that no significant changes have been made in the nature of this work for the past two decades. The Carrier calls attention to the fact that rates of speed are low, and there is no necessity of comforming to any schedule requirements; that the general character of these operations is such that engineers seek them, because the work is not burdensome; that there is comparative freedom from the exacting responsibility which attaches to main line service, and there is not the monotony which characterizes the classification of yard switching. (Tr. 342.)

The Carrier states that fully 92 per cent of the principal movements under consideration are over double-track line through interlocking plants, with only two grade crossings and very little interference because of first-class train movements over the lines; that movement is continuous, there being but few stops en route; that for all this work the present basis of pay is strictly in accordance with the present working agreement.

Any increase in current rates of pay would, it is urged, be contrary to the letter and spirit of the Stabilization Act and the Anti-Inflation Policy of the Federal Government. Nor, says the Carrier, can such wage increase be defended on the basis of intra-plant inequalities or inequities, because none exist; to the contrary, it contends that an advance in wage rate for the work in question would create rather than eliminate inequities and inequalities, (Tr. 529-531).

III

Discussion and Recommendation

We have carefully considered the arguments and contentions of both parties. In the first place, we are not convinced that Section 4 of Article 25 applies to cases where changes in the schedule are sought. That Section speaks of the "settlements made in the adjustment of claims . . ." We are inclined to the view that this Section applies to claims for alleged violation of or refusal to apply the rules of the Schedule. We agree with the Carrier that the situations involved in the San Francisco Terminal (settled by Decision 176 Railway Board of Adjustment #1 rendered on August 22, 1918, and by Decision 1281 of the same Board without date) are not the same as the situation here involved. In both those cases yard limits were so changed as to substitute yard engineers over part of the territory for road engineers. Decision 176 was rendered in 1918 when Transfer or Belt Line service had not yet been clearly defined. Hence, the Board of Adjustment #1 was not in position to grant or deny the basis of a determination of whether the service involved was or was not transfer service. It consequently ruled that each case must stand on its own facts, rather than be governed by a general rule which might not equitably apply to all yards. Since that date Transfer Service has become fairly well-defined throughout the country and is by specific rule between the instant parties defined on this road. The two situations involving the San Francisco Terminal Yard settled by Cases 176 and 1281 of Board of Adjustment #1 must fall under the category of cases where work of road engineers was absorbed by yard engineers and not under the category where transfer service was performed. Likewise, under this category apparently fall the situations involved in the Sparks-Reno and Roseville-Rocklin, Tracy-Banta and Fresno Yards.

The principle enumerated in Article 11, Section 3 (d) applied to these Yards when yard limits were extended, but since the hauls involved in the instant case are all within the inner zone and do not run over extended yard territory, such principle cannot apply in this case.

The situation in the Portland Yard and at the Stockton Port were construed to involve Transfer Service. The former was specifically, by the Carrier's letter of April 22, 1936, and Mr. Peterson's reply of April 24, so designated and, indeed, from the recitation of the facts contained in Mr. R. McIntyre's letter of April 22, 1936, seems to have involved such service. Evidently the situation at the Stockton Port was in doubt partly for the reason that the instant Carrier was a joint owner with two other roads of the facilities located there and operated the joint property one out of every three years. But by compromise it was construed as Transfer Service and, therefore, comes under that category. The service involved in the instant case performed totally on the Carrier's own tracks, actually or constructively owned by it and totally within the yard limits prior to January 1, 1926 (inner zone) is not Transfer Service. Were the above instances the only precedents, we would have to deny the request, but there remains to consider the Oakland yard situation covered by the Mediation Agreement in Case A-230. The situation in this yard as it existed in December 1910, September 1912, March 1913, December 1914, and April 1929 are set out in detail under the heading "Position of the Carrier". There is no need to repeat that description. The Carrier's contention that the mediation settlement of November 1934 was based on the principle that the yard limits were to be frozen as of December 1910 cannot be sustained. In the first place the agreement gave valley rates for certain distinct hauls, i. e., the entire distances from Emeryville and Seaver Junction, and vice versa; from East Oakland to Elmhurst and vice versa, and from West Oakland train yard to Mastik Junction, and vice versa. Only for the entire hauls between these points and not for all work outside the 1910 yard limits and within the later limits was the valley compensation given. Consequently, it is clear that the principle set out in Section 3 (d) of Article 11 did not influence that settlement. Moreover, the very agreement characterizes the movements as "long haul drag service". The hauls above mentioned are respectively approximately six, five and eight miles. They are long drag hauls as is the instant haul in the Los Angeles Yard which over the East Bank route is seven miles and over the Alameda route is five miles. We think the above-mentioned hauls in the Oakland Yard are substantially similar to that between the A, B, and C units and Butte Street Yard in the Los Angeles Terminal, and that the basis of the settlement of the dispute in reference to the Oakland Yard was what the Organization is here contending for.

The Carrier expresses concern that granting valley rates for the instant haul will open up the door for numerous similar requests on other parts of the road. It would seem by Mr. Peterson's letter of November 8, 1937, to Mr. A. J. Hancock, written after November 4, 1937, the date of the Mediation Agreement, that the only cases which the former then knew of were this case at Los Angeles and one at Fresno which has since been adjusted. The fact that in nearly eight years no other requests for freight, rather than yard rates, for long haul drag service have been made would seem to allay the Carrier's apprehensions.

RECOMMENDATION:

The Board recommends that the request of the Organization that freight rates set out in Article 2, Section 2 of the Agreement between the Southern Pacific Company (Pacific Lines) and the General Committee of Adjustment of the Brotherhood of Locomotive Engineers be paid engineers, Los Angeles Yard, for handling cars between A, B, and C units to Butte Street Yard, operating via the East Bank Line or Alameda Street.

IV

EFFECTIVE DATE OF RATE CHANGE

The Organization's request for retroactive pay is based upon an allegedly inordinate delay in the adjustment of the controversy between November 8, 1937, and April 18, 1945. In support of its request for retroactive pay, the specific date of which is set as June 12, 1940, adverts to its file of correspondence. This file (Ex. "C") indicates that on November 8, 1937, General Chairman P. O. Peterson wrote to Mr. A. T. Hancock, Carrier's Assistant General Manager, suggesting that drag service at Los Angeles and possible yard limit changes at Fresno be covered by an agreement similar to the one negotiated on November 4, 1937, for Oakland Terminal. No reply was made by Mr. Hancock to this communication. On November 5, 1937, Mr. Peterson wrote Local Chairman Buckley requesting the matter be placed before his Division. On June 12, 1940, a communication dated at Los Angeles and written by Local Chairman Harva White was sent to Mr. D. J. Russell, Superintendent of the Southern Pacific Company, asking for adjustment of the Los Angeles Terminal situation on the basis of the Mediation Agreement governing the Oakland Terminal, dated at San Francisco, November 4, 1937 (Ex. "C"). This is the letter which the Organization indicates should mark the retroactive date.

Relative to the request contained in Mr. White's letter, Superintendent Russell and Local Chairman White, Los Angeles District on September 5, 1940, signed a Joint Statement of Facts. On October 15, 1940, General Chairman P. O. Peterson wrote Mr. C. M. Buckley, Assistant Manager of Personnel, detailing the matter and requesting a joint conference, (Ex. "C"). A reply to this communication was dated November 1, 1940.

On July 18, 1941, the Brotherhood by its duly authorized representative applied for the services of the National Mediation Board. On July 26, 1941, the Secretary of the National Mediation Board advised the Carrier of this fact, (Ex. 1 and Tr. 324-328). Between March 1942 and August 1943 the Board's Mediators discussed the controversy with representatives of the Carrier and the Brotherhood at various times. On May 27, 1944, Mediator Mitchell, in a joint communication to the Carrier's Personnel Manager and the Brotherhood's General Chairman, proposed that the parties enter into an agreement to submit the dispute to arbitration. On June 13, 1944, the Carrier's Personnel Manager notified Mediator Mitchell that the Carrier would agree to arbitration, provided the request under consideration could be restated in such a form as to make possible final and complete disposition of the matter.

On June 5, 1944, the General Chairman advised the Board of the Organization's willingness to arbitrate. On July 15, 1944, however, Mediator Mitchell notified the Carrier by letter that the Organization was unwilling to restate the form of the question for purposes of arbitration. After further exchange of letters and telegrams between the Secretary of the National Mediation Board and the Carrier's representative, the said Secretary on August 21, 1944, notified the Carrier that the services of the Board had been terminated in connection with the instant request. On September 22, 1944, the Brotherhood asked the Chairman of the National Mediation Panel to create an Emergency Board to avoid taking a strike vote. The Emergency Board was designated March 28, 1945, and the hearing commenced April 18, 1945.

The Brotherhood attributes the delays herein detailed largely to the Carrier, partly, and incidentally, to the National Mediation Board's lack of adequate mediation facilities in this emergency period. The Carrier, on the other hand, denies responsibility for delay and indicates it had done everything in its power to expedite a settlement. (Tr. 296-305, 324-328; Carrier's Ex. 1, Letter 2, in re A-990.)

The first formal request for a change in rate was made on October 15, 1940. While in November 1938 the matter was suggested and conference requested, nothing was done until October 15, 1940, to invoke the applicability of the Amended Railway Labor Act. The delay in pressing the matter between the parties must be ascribed to the organization. There seems to have been considerable delay between October 15, 1940, and July 18, 1941, when the Brotherhood applied to the National Mediation Board for its services, but we have no evidence such delay was due to the Carrier.

In Case A-1786 between the Brotherhood of Railroad Trainmen and the Sacramento Northern Railroad the Emergency Board, sitting on that case, composed of the same members as the instant Board, had this to say:

> We think that in fixing an effective date for wage increases the principle should be recognized that the Carrier is not to be penalized because in good faith it did not agree to an increase. The very process of negotiation provided by the Amended Railway Labor Act of June 21, 1934 recognizes that it is one designed to help minds to meet in agreement. There must, therefore, be a reasonable time allowed for that to take place. During such reasonable time it is not expected that the new rates could have been in force.
>
> The second principle applicable would seem to be that when an Emergency Board finds a certain increase justified it can be considered as correct, and being correct is one at which the parties within a reasonable time should have arrived. The parties should not be considered blameworthy because they did not arrive at such a rate, but rather it should be viewed as if the non-partisan body (the Board), being in a neutral position, discovered what the real rate should have been under the conditions as they existed at the time of invocation. Having so found what wage rate should have been arrived at by the parties during a reasonable period of negotiation after all the forces of negotiation had come into play, such rate will be deemed to have been in effect from the day it reasonably should have been found and agreed upon.
>
> This method of fixing the date cuts out that period of mediation and arbitration and the period during which the Emergency Board operates and allows to the Carrier a reasonable period of negotiation. It thus does not discourage the Organization from willingly accepting every means to compose the differences, which otherwise might be the case where it thought that any time so used would adversely influence the effective date of any increases which might be ultimately granted. Moreover, no benefit can come to the Carrier because of the fact that no agreement has been reached short of Emergency Board operations.
>
> It should be added that there are situations which may call for some modification of these principles. Thus where the case is left in abeyance for a considerable period without either the Carrier or the Organization apparently interested in arousing it from its quiescent state or where the parties delay purposely to await the outcome of some other determination or enter into a standby agreement, the effective retroactive date would have to be determined in view of those conditions.

The efforts at mediation consumed considerable time; in fact, nearly three years. While the Carrier is not charged with responsibility for failing to agree, neither should it obtain the benefit of the difficulties of the National Board in furnishing the services of Mediators.

In conformance to the principles laid down in Case A-1786 we think the effective date for the increase to begin should be the beginning of the first pay period next after July 18, 1941, and that a check back to that date should be made, and we so recommend.

CASE A–1084

I

REQUEST

The Organization's request reads as follows:

> Request that the practice of requiring engineers to deliver train orders under Transportation Rule 217 be reduced to cases of emergency, such as wrecks, washouts, snow slides, sickness, or other unforeseen conditions where life or property may be in jeopardy. (Ex. "B", 1.)

Transportation Rule 217, which is the center of controversy in this case, reads as follows:

> A train order to be delivered to a train at a point not a train order office, or at one at which the office is closed, must be addressed to "C&E............. at ...., care of ...."; and forwarded and delivered by the employee in whose care it is addressed. When sent in care of the conductor or engineer of a train, the number of the order must be shown in the usual manner on clearance for the train making delivery the same as if addressed to it. Copies of the order must be provided for conductor and engineer of the train making delivery and copies for conductor and engineer of the train addressed.
>
> Orders must not be sent in the manner herein prescribed, to a train, the superiority of which is thereby restricted. (Ex. "B", 1-2.)

Identified also with the discussion of the point at issue is Article 33, Section 10, of the Engineers' Agreement which reads as follows:

> Engineers will not be required to take train orders over the telephone, except in cases of extreme emergency, such as wrecks, washouts, etc. (Ex. "B", 1; also Engineers' Agreement, effective May 1, 1942, 110.)

II

HISTORY OF THE DISPUTE

The controversy involved in Case A-1084 is of several years' standing. The question of engineers delivering train orders was listed as Case 19 in a Docket of 42 cases submitted by the Brotherhood on April 4, 1939, to the Carrier. (Ex. "F", 1.) That case was withdrawn in the apparent anticipation that the handling of such orders would be reduced to an absolute minimum. On February 17, 1941, protest against continuance of the practice on the grounds that the engineers have sufficient responsibility without the duty of delivering train orders was made by the Local Chairman of the Portland Seniority District. (Ex. "F", 1.) A resolution of the Tucson (Arizona) Division No. 28, Brotherhood of Locomotive Engineers, dated April 29, 1941, protested the continuance of the requirement on the ground that it imposed a burdensome responsibility on the engineers, which was not a part of their work, (Ex. "F", 2).

In a letter dated June 24, 1941, the Organization again called the Carrier's attention to the problem and suggested the reduction of the practice to cases of emergency, such as wrecks, washouts, snow slides, sickness, or other unforeseen situations where life and property may be in jeopardy. In short, it sought to make applicable the same principle as prohibits engineers from taking train orders over the telephone. After exchange of correspondence over much of the year 1941 notice of request for a new rule, as above set out, was on October 22, 1941, served on the Carrier, and came to this Board through the processes of mediation.

III

The Issue

The issues in this case sufficiently appear from what has been set forth under the title "History of the Dispute" and from the matter contained under the succeeding heading of Position of the Parties".

IV

Position of the Disputants

1 *Employees' Position:*

The Organization contends the delivery of train orders as presented by Transportation Rule 217 involves under normal conditions the transfer of the duties of telegraph operators to engineers, and consequently is outside of the ordinary functions of the engineering craft; that the Carrier's current use of Rule 217 is an easy, "sloppy way of dispatching its trains"; that such method does not expedite the movement of trains, but in reality delays the train of the engineer who is required to deliver orders, (Tr. 543-544).

The Organization states that the delivering of train orders by engineers adds to the danger of train operation; that it is difficult for engineers to perform such a duty and at the same time carry out the intent and spirit of Rule 874 of the Company's Transportation Department, which imposes an obligation to alertness in the interest of safe operation, (Tr. 596); that in a windy locomotive cab the handling of a number of thin copies of train orders and familiarizing oneself with the contents of such order detracts the attention of the engineer from his duty to watch the road; that accidents have occurred, and at least one fireman delegated by his engineer to deliver orders was killed, (Tr. 782-783).

Finally, the Organization contends that engineers are disciplined if and when in the midst of their heavy duties they fail to deliver a train order, a responsibility outside their already complex duties, (Tr. 586-591-631-632); that thirty (30) demerits have been assigned for failure to deliver a train order, which conceivably might have placed the disciplined engineers close to the maximum of ninety (90) demerits, regarded as near to the borderline of dismissal under the Brown System of Discipline, (Tr. 631-632).

2. *Carrier's Position:*

The Carrier contends that Transportation Rule 217, which is involved in the instant case is a very old rule adopted July 1, 1892, by the Southern Pacific Company from the Code of Rules of the Association of American Railroad, which first introduced it as Rule 519 on October 13, 1887, (Tr. 655); that the Rule is necessary because it is physically and economically impossible for the Carrier to maintain train order offices at all points where there are sidings; that such offices are maintained at some 520 locations on the Company's Pacific Lines, but building and living quarters could not be provided at the innumerable other locations where sidings exist, (Tr. 661-663); that to avoid unnecessary delay it is sometimes necessary to send orders to such other points by engineers.

The Company further contends that the handling of train orders by engineers is not only necessary in the interest of expediting train movements, but it is a thoroughly practical method, (Tr. 662-663); that delivery is often made by the engineer, reducing speed and throwing the orders off to the conductor and engineer of the train on the siding after having indicated to the receiving train by the steam whistle that orders are to be delivered; that this operation, even if the engineer must stop the train, falls within the traditional job of an engineer, (Tr. 663).

The Carrier states that it must be kept clearly in mind that the use of train orders and consequently the occasional use of Rule 217 is essential in single track operation; that it is very rarely used in multiple track operation, and not at all in centralized traffic control; that the whole procedure reduces or eliminates unnecessary delay, thus advancing and expediting the movement of passengers and freight trains, much of which at the present time is essential to the effective prosecution of the war, Tr. (663-664).

The Carrier argues that rather than being burdensome, the delivery of train orders under the provisions of Rule 217 often is of great advantage to engineers; that engineers are interested in the reduction or elimination of such delays and the reduction of the elapsed time during which they are on the road and on duty between terminals (Tr. 663-664). An examination of statistical data indicates that in September 1941 engineers delivered only 2,095 orders out of a system total of 119,708, or 1.75 per cent; in October 1941 they delivered 2,795 out of a total of 131,020, or 2.13 per cent; in September 1943 they delivered 1,897 out of a total of 133,875, or 1.42 per cent, and in July 1944 they delivered 1,348 out of a total of 133,038, or 1.01 per cent. (Ex. 8.) "Hence", says the Carrier, "the task is not burdensome"; and that as rapidly as is feasible the Company is overcoming the handicap of single-track operation through the constant improvement of its plant and facilities, such as more double tracks and the installation of centralized traffic control, (Tr. 664).

Finally, the Carrier points out that the instant proposal of the Organization is designed to modify a necessary and long-standing rule which has proved to be indispensable to the management and conduct of its business; that any such modification of Rule 217 would handicap the Carrier in its practical operations, would necessarily result in inordinate delays in train movements, and would deny to the instant Carrier an operating privilege available to practically all Class 1 Carriers in the country, (Tr. 664-665).

V

Discussion and Recommendation

What really seems to have precipitated the request in this case was a feeling on the part of the Organization that the Carrier was abusing Transportation Rule 217; that it was using that Rule as a method of dispatching and handling trains when it could have delivered train orders through an operator at a train order station. The Organization was under the impression, too, that the Carrier had during the depression closed a number of train order stations for the sake of economy and had not again reopened them. But this impression must be dispelled by the evidence of the Carrier that it has substantially increased the telegraph offices on its system to keep step with increasing business despite difficulties in securing trained operators and the necessary facilities. True, some

of the stations have been changed or relocated. Manifestly, there cannot be a train order station at every siding. It should not be necessary to establish more train order stations with living facilities than are reasonably necessary for the expeditious handling of trains. While the Organization now takes the definite position that the relaying of train orders is not properly a part of its work, except as a voluntary concession in cases of emergencies, the history of the dispute reveals that it did not originally take that position, but complained of the abuse of Transportation Rule 217. We think that there have been instances where a dispatcher could have reached a train crew through an operator rather than by relaying through a delivering engineer and that some dispatchers, realizing that they could fall back on Rule 217, were somewhat lax at times in handling trains through operators when that was possible. But we do not think the practice is prevalent. The small number of train orders delivered by engineers as compared to all train orders issued seems conclusive on that point, (Ex. 8). There is no real evidence that the practice is growing. In fact, the evidence submitted by the Carrier is to the contrary. The locomotive miles for September 1941 were 3,970,995, both passenger and freight; during October 1941, 4,257,030; in September 1943, 4,659,461; and in July 1944, 5,064,408 miles. The train orders delivered by engineers during the corresponding months were respectively, 2,095, 2,795, 1,897 and 1,348. Thus, except for October 1941 there was an actual decrease in the number of train orders relayed through engineers. Of course, the percentage decrease was far greater. So it may be concluded that in general over the system the practice is not on the increase.

The practice of using engineers to relay train orders occurs very seldom in double-track operation. And on centralized traffic control it is not used. We may, therefore, exxpect the situation to change for the better as C. T. C. is installed for single-track operation or double trackage is increased.

We think that it is somewhat inconvenient for engineers to have to deliver copies of train orders to both engineers and conductors. In a number of cases it entails two stops and requires at times looking for the train crew if they happen to be at lunch or away from their train, but we think the latter represents the rare, rather than the frequent case. Train orders are given to engineers to relay because they are in front of the train and have the best opportunity to first notice the deliveree train. Moreover, if they were given to the conductor of the deliveror train he would have to notify the engineer. Where the train is a long one and the "meet" may occur quite soon after the train order is delivered there may not be opportunity for the conductor to contact the engineer in the interval. Practical considerations, therefore, seem to dictate that messages be handed to the engineer.

The Organization's contention that this work of engineers deivering train orders is outside of the craft work of the engineer in cases where it cannot be handled through an operator, must, in the light of the history of the practice, be rejected. What functions or work belong to certain jobs has been the bone of contention for many years throughout the railroad industry. There are many times when members of a craft deny that certain work is their work; there are many times when the Organization representing the craft insists that certain work belongs to a particular craft which it represents. One of the tests of the functional content of a job is what functions have attended it through the years. Using engineers to deliver train orders under certain circumstances is apparently quite general throughout the country. On this road the practice dates back nearly sixty years. We do not think that the work of relaying train orders through engineers in cases where it has been impractical or impossible to do so through an operator is placing on the engineers a duty which does not belong to them. We may expect that the very delay entailed in train movements by requiring stoppage to deliver such orders will itself tend to hold the practice to those cases where the order could not be relayed through an operator. But there would seem to be no objection to a rule analogous to that which is contained in the Conductors' Schedule which would provide that engineers should not be required to deliver train orders where the dispatcher could have anticipated the situation in time to catch the deliveree train at a telegraph office. The likelihood of incurring a penalty payment of a day's pay at operator's rates would discourage all use of engineers by the dispatcher to relay messages to other trains. However, that would be better left open to negotiation.

RECOMMENDATION:

The Board recommends that the request of the Organization be denied, without prejudice, however, to the request for a rule which will provide that where the dispatcher could have reached the train to be protected by train order through a telegraph operator, no engineer shall be required to relay a train order to such train.

CASE A-1210

I

ORGANIZATION'S REQUEST

On December 1, 1941 the Organization served on the Carrier a request for the reestablishment of Mojave as a pooled freight and district terminal reading as follows:

> Request that Mojave, San Joaquin District be reestablished as a pooled freight and district terminal. (Ex. "B", 2.)

Cited in relation to the instant case is Article 31, Section 2 of the Engineers' Agreement, which in part reads:

> Engineers assigned to main line pooled freight service will be assigned as follows:

Between: *Bakersfield and Los Angeles."* (Ex. "B", 2)
And Section 3 of Article 31, which is as follows:

> Section 3. Should it become necessary at any time to make changes in assignments as outlined in Sections 1 and 2, this Article, it will be done in accordance with Section 2, Article 13.

Section 2, Article 13, provides that:

> Should it become necessary at any time for operating or other reasons to discontinue or create any main line terminals, changes in terminals will be considered as a proper reason for advertising such runs as are affected for seniority choice of engineers and bulletins will be posted and assignments made as provided in Article 32, Section 10. Other main line terminals will not be established or maintained for pooled or extra men unless there is enough work for two or more crews between designoted points.

II

DESCRIPTION OF THE OPERATIONS INVOLVED IN THE CURRENT DISPUTE

The territory included in the San Joaquin Division is shown in Exhibit 29. The Division is shown as ending at Saugus, a point about 35 miles northwest of Los Angeles, but all trains over main line of the Division between Bakersfield and Saugus are operated by the same crews into and out of the Los Angeles Terminal, (Tr. 1288).

The total mileage of the main line between Bakersfield and the Los Angeles terminal yard is 166.4 miles. Of this distance 43.2 miles are double track, and 32.7 miles are single track with centralized traffic control. The remaining 90.5 miles are a continuous single track district between Mojave and Burbank Junction, upon which there are 24 sidings or passing tracks, and 11 telegraph offices at which train orders are received and delivered to train crews, (Tr. 1288).

Two remote control units have been established within this single track area, one at Vincent, which controls the switches for the sidings at that point, and the other Saugus, controlling the sidings at the adjacent stations of Saugus and Newhall. The entire district between Bakersfield and Los Angeles, including the centralized traffic control territory, is fully equipped with block signals, (Tr. 1289).

The C. T. C. district extends from Bena, about 16 miles east of Bakersfield, to Tehachapi, at the summit of the Tehachapi grade, a distance of about 32.7 miles. The line between Bakersfield and Mojave is jointly used by the Santa Fe and the Southern Pacific. The volume of each Company's train movements is normally about equal. At present, however, the ratio is 60 to 40 percent in favor of the Sante Fe, (Tr. 1405). The 32.7 miles of this district are equipped with the C. T. C. described above; the remaining 16 miles from Bakersfield to Bana and the 20 miles from Tehachapi to Mojave are double track, (Tr. 1291-1292). The joint agreement with the Santa Fe under which that carrier uses the Line between Mojave and Bakersfield dates from January 1, 1889, (Tr. 1292).

III

ANTECEDENT DEVELOPMENT IN THE OPERATION OF THE LINE BETWEEN BAKERSFIELD AND LOS ANGELES

For the purpose of the instant request, the development of the operations involved fall roughly into four periods as follows: 1876 to 1908; 1908 to 1925; 1925 to 1939, and 1939 to 1945.

1. The Period 1876 to 1908:

The Los Angeles-Bakersfield road is a part of the original San Joaquin Valley route between San Francisco and Los Angeles which dates from June 1, 1876. Until 1904 when the Coast Line was opened this was the only through line between these two cities. As indicated above, joint operations with the Santa Fe between Mojave and Bakersfield date from January 1, 1899. From that date to January 6, 1908 all train and engine crews ran through between Bakersfield and Los Angeles without being relieved at Mojave or any other intermediate point, (Tr. 1292).

2. The Period 1908 to 1925:

In order to avoid possible violations with the pending Hours of Service Act the Carrier on January 5, 1908 discontinued the through operation of train and engine crews. Mojave was made a terminal, and crews operated between Bakersfield and Mojave, a distance of 67.8 miles, and between Mojave and Los Angeles, a distance of 99.1 miles, in both directions, all crews being changed at Mojave. Between Bakersfield and Burbank Junction the entire line at that time was single track, (Tr. 1292-1293).

The discovery of oil in the San Joaquin Valey (1899) and conditions incident to the First World War increased tonnage over this line to such an extent that double track was imperative in territory where traffic was heaviest. By August 1923 double track was installed over 35.1 miles of the 67.8 miles between Bakersfield to Mojave. The result was a decided improvement in the operations between Bakersfield and Los Angeles, the reduction in running time being such that on February 1, 1925 Mojave was discontinued as a terminal for both engine crews and train crews in the through freight service, (Tr. 1087-1088 and 1294-1295).

3. The Period 1925 to 1939:

As a result of the discontinuance of Mojave as a terminal in 1925 engine crews have run through between Bakersfield and Los Angeles. Continued increase in traffic and the need to expedite the movement of trains led to the installation of five remote control plants during 1928 and 1930 on the signal track between Bena and Tehachapi, (Tr. 1294).

4. The Period 1939 to 1945:

This line between Bakersfield and Los Angeles has carried an increasingly heavy load of traffic since the depression conditions began to disappear in 1939. Obvious causes are increased business recovery, the initiation of the rearmament program, the war traffic following 1941 and agricultural developments in the southern portion of the San Joaquin Valley. Exhibit 31 reveals the effect of these conditions upon traffic. For example, in September 1944, 25,345 cars were handled between Bakersfield and Los Angeles, with a total tonnage exceeding 2,293,000. This, it will be noted, was about 58 per cent greater than in October 1940 when the cars totalled about 17,000 and the volume of tonnage was about 1,448,000, (Tr. 1296).

The effects of this extraordinary increase in the volume of traffic were numerous. The speed of trains was slowed down; a greatly increased labor force, much of it untrained and inexperienced, had to be recruited; additional telegraph offices had to be opened; and new equipment had to be obtained, especially rolling stock, which because of war-time restrictions was not easily obtained, (Tr. 1297).

Despite these difficulties, the Carrier continued its efforts to expedite train movements. Centralized traffic control was installed between Bena and Tehachapi in 1943. Remote control plants were installed at Vincent and Saugus. Sidings were extended and oil buffer spring switches were provided at 24 locations. Because of the increase in the interchange of freight with the Santa Fe, the Mojave yard was extended and improved. A program of tunnel elimination between Mojave and Saugus, and between Bakersfield and Tehachapi has been developed. Heavier locomotives have been purchased and placed in operation. Water supply has been improved, (Tr. 1294, 1296, 1299; Exs. 29, 31, 32 and 26).

IV

HISTORY OF THE DISPUTE

The instant request originated in a communication from the General Chairman to the Carrier dated December 1, 1941 asking that Mojave be reestablished as a pool freight and district terminal. After the exchange of a series of communications, discussions and conferences between representatives of the parties, and general exploration of the points at issue, the Carrier on January 5, 1942 notified the General Chairman of the B. L. E. that paragraph 8 of the Chicago Mediation Agreement dated December 5, 1941 excluded consideration of the request during the period of the moratorium established by said agreement, which was to run for eighteen (18) months, (Tr. 1091; Ex. "G", pp. 1-2).

On January 24, 1942 the Secretary of the National Mediation Board advised the Carrier that the Board's services had been invoked by the Brotherhood of Locomotive Engineers in connection with the instant request. The Board's mediators participated in conferences with representatives of the parties at various times between March 1942 and May 1, 1944. Arbitration was suggested by Mediator Mitchell, May 27, 1944, but the Carrier declined on June 13, 1944, (Tr. 1092). By letter dated July 24, 1944, the Secretary of the Board advised the Carrier and the Organization that its file on the instant matter had been closed, (Tr. (Tr. 1096). The instant case was submitted to this Emergency Board which opened the hearing of this and other cases April 18, 1945 at San Francisco.

V

THE ISSUE

The issue in this instant matter is clearly whether the Carrier shall be required to reestablish Mojave as a pooled freight and district terminal, thus restoring the situation as it existed prior to February 1, 1925. The essential inquiries here are:

(1) Have operating conditions resulting from the discontinuance of Mojave as a pooled freight and district terminal necessitated excessive hours of work which affect adversely the health, comfort and general well-being of the engineers involved?

(2) Would restoration of the former status of Mojave materially nullify the economies and efficiency consequent upon the Carrier's large investment in improvements subsequent to 1925?

(3) Would compliance with the Organization's request contravene the Carrier's extensive and intensive efforts to move men, material and equipment required in the effective prosecution of the war?

(4) Are hours on duty for engineers on this run being reduced or increased?

(5) Would the reestablishment of Mojave as a terminal necessarily involve increased cost of operation for the Carrier?

(6) Would the reestablishment of Mojave materially decrease the number of hours on the road?

VI

ARGUMENTS OF THE PARTIES

1. Organization's Arguments:

The principal reason for the Organization's request that Mojave be reestablished as a pool freight and district terminal is that under the existing schedule of operations the hours of engineers are too long, (Tr. 862; Exs. "H" and "I"). In making the trip approximately 169 miles between Bakerfield and Los Angeles, trains must pass over three ranges of mountains with summits of 4024.6 at summit near Tehachapi, 3210.0 feet at Vincent, and 1392.2 feet at Tunnel near Newhall, (Tr. 1165, Carrier's Ex. 15). The Organization insists that such a run imposes excessive strain, especially upon engineers, (Ex. "G", 3); that the physical conditions of operation make such a result inevitable; that trains pass through twenty-two tunnels of from 300 feet to one mile in length, which means train crews are exposed to excessive heat and gases; that these conditions constantly grow more deplorable.

The Organization states further that an additional factor in the physical strain of the instant run is the increasing length of the trains; that the number of cars per train has increased from approximately 65 to 85 with the increase in tonnage in recent years; that the speed of trains has been reduced as has the number of engines in trains; and that all operating changes have increased rather than decreased the hours of service under tunnel conditions of smoke and gas.

It is further contended that the Carrier's actions do not indicate any effort to eliminate the conditions contributing to ill health and the strain of excessively long hours; that in fact, while the Carrier has eliminated many helper assignments, only recently it has actually increased the number of men in this long hour service by increasing the number of men in the Los Angeles-Bakersfield assignment; also the long hour service to the remaining Bakersfield helper men has been extended by running the men beyond the Summit to points anywhere between Bakersfield and Los Angeles to help westward trains on their return trip to Bakersfield. The Organization asserts that to avoid violation of the hours of service law these helper men are released from duty at points where sleeping accomodations are unavailable, thus often compelling the men to spend more than twenty-four hours without opportunity for sleep, (Ex. "G", 4-5).

It is not without reason, the Organization contends, that the instant assignment is known as the "endurance run" and complains that the ever-increasing hurrying and driving of engineers under the strain of excessive hours and a most exacting service have pushed human endurance to the limit. The Organization's Exhibits "H" and "I" are said to reveal that the hours on duty on this run frequently reach the legal maximum of 16, and invariably hover around 13 and 14. It is also pointed out that in helper service engineers who are relieved at San Fernando must often wait there for a station wagon to be dead-headed back to Bakersfield; otherwise they run light back via the line to that city; that in consequence men are away from their homes on tours of duty which often run as high as thirty-five hours, (Exs. "H" and "I", Tr. 960-961).

The Organization claims that evidence of the engineers' desire for the reestablishment of Mojave as a terminal is found in the favorable referendum in which the engineers voted by an overwhelming majority to have the General Committee request the change here proposed, and in the Resolution adopted by Division 126, Bakersfield, on August 2, 1943, with twenty-two (22) members approving, (Tr. 862; Ex. "G", 3-5).

It is argued that even if it is granted that the engineers assented in 1925 to the discontinuance of Mojave as a pooled freight and district terminal, this does not necessitate continued acceptance of the change under operating conditions detrimental to health or to decency and comfort in the men's mode and standard of living, (Tr. 980-982).

2. *Carrier's Contentions*:

The Carrier points out, first, that the terminal at Mojave was discontinued in 1925 as an attempt on its part to reduce further the overall time of freight train movements between Bakersfield and Los Angeles, and that such discontinuance was approved by the Enginemen's Organization, (Tr. 1526-1527, and especially Tr. 1088-1089); that it is significant that there was no controversy between the Carrier and its engineers and firemen in 1925 as a result of the order of the Superintendent of San Joaquin Division discontinuing Mojave as a terminal for through and irregular freight crews in train and engine service as of 12:01 a. m., January 20, 1925, (Tr. 1089); that actual discontinuance began on or about February 1, 1925.

A protest by the conductors and trainmen was presented to the Train Service Board of Adjustment for the Western Division in Case No. 4219, but no decision was reached. This dispute subsequently was handled on the property by the Board of Mediation, Case No. GC-592, and on June 16, 1934 the signed Mediation Agreement provided retroactive pay totalling $62,614.39 in final settlement with these parties. Morever under the provision of Section 4 (b), Article 2 of the Agreement covering engineers in effect on January 1, 1925, and in all subsequent re-issues of the said agreement, the rates for engineers in freight service between Los Angeles and Bakersfield automatically became 46 cents per 100 miles higher than the rates previously allowed for 100 miles between Los Angeles and Mojave and between Mojave and Bakersfield. Acceptance of this arrangement, the Carrier argues, manifested acceptance of the order abandoning Mojave as a terminal; and that not until December 1, 1941 was there filed a formal request for the restoration of Mojave as a terminal, (Tr. 1089-1091).

The Carrier points out, secondly, that from 1925 to the present moment, it has carried on sustained efforts to expedite traffic over the San Joaquin District and has expended large sums of money on permanent improvements in the roadway and fixed structures, in the purchase of new and more powerful locomotives and the general development of operating facilities; that between 1925 and 1944, inclusive, the total expenditure for additions and improvements in roadbed, track and other railroad facilities, exclusive of rolling stock, was $12,723,686, (Tr. 1119-1120; Ex. 18). These improvements are detailed in Carrier's Exhibits No. 13 to 30, inclusive.

The success of its efforts to expedite train movements is clearly demonstrable, the Carrier states. An examination of Exhibit No.

32 shows that the gross tons per mile of road operated in 1925 when Mojave was discontinued as a terminal was 5,891. This increased to 6,726 in 1927, but greatly diminished during the worst of the great depression (1930-1936). Because of business recovery, 1937 showed 6,678 gross tons. With the beginning of the rearmament program and continued business expansion in 1939, followed by the war emergency, the totals increased from 6,020 tons in 1939 to 11,953 tons in 1944. These statistics are for the Southern Pacific only, and take no account of the even heavier traffic density registered by Santa Fe.

Additional evidence of traffic density is found in Exhibit Nos. 34 and 35 which respectively indicate the increases in gross tons per train and gross tons per mile for through freight in the Bakersfield-Saugus territory. Between 1923 and 1944 the gross tons per train increased from an East-West average of 1,718 to 3,220; and the gross tons per mile from an East-West average of 18,124 to 41,266.

The Carrier believes that recognizing all factors, including the greater car and train loading and higher train speed, technical developments made possible a 100 per cent improvement in 1944 over 1925, (Tr. 1306-1307). Nor has the limit been reached in this matter of improved performance; that is, reduction of time on the road for the freight trains in this territory. Conditions incident to the war emergency have necessarily retarded the rate of improvement. It is argued that return to normal conditions will make possible even better over-all times for the train and engine crews. Even with present facilities, the Carrier believes, the over-all time on duty for the crews of these through trains can be reduced at least two and a half to three hours on the average, (Tr. 1309); that reduction of delays at the Los Angeles terminal yard now averaging one hour and thirty mintues, and at Mojave now averaging one hour and twenty-five mintues, will be possible when normal traffic conditions return, (Tr. 1309); that these delays can easily be reduced about forty-five or fifty minutes, and the delays at Bakersfield correspondingly. Running time en route in either direction, as compared to the over-all time, it is claimed, can be reduced at least one hour and thirty minutes, and probably more, (Tr. 1306-1309; Ex. 31).

The Carrier further states that the Employees' proposal to restore Mojave as a pool freight and district terminal would, if accepted, nullify to a very large extent the improvement in road and equipment and in methods of operation introduced in this district, (Tr. 1310); but even more serious than this, says the Carrier, is the unnecessary increase in manpower which such a restoration would make imperative, especially now when manpower shortage is so acute. If the employees request were granted about fifty per cent more engineers than at present would be needed for the Los Angeles-Bakersfield through freight pool. The Carrier states that the opinion of the Organization that the aggregate of forty-seven engineers in the pool at present would be reduced to an aggregate of forty is without foundation, (Tr. 1012 and 1310); that quite the contrary, thirty additional engineers will have to be added to the pool, (Tr. 1310), with an obvious increased cost of operation.

The Carrier further claims that the restoration of Mojave as a pooled freight and district terminal cannot be justified on the basis of excessive hours on duty and alleged consequent injury to health of the engineers or risk of accidents and injury, (Tr. 1527); that there is no evidence here either of the alleged hazards to health or the expressed desire of a majority of engineers for the proposed change; that if such hazards existed or the engineers considered this so-called "endurance run" unattractive, it is reasonable to assume that requests for transfer by men having sufficient seniority would have been numerous. The relatively easier valley freight run between Bakersfield and Fresno, and the coast freight and passenger runs between Los Angeles and Santa Barbara are available to many of the engineers represented in the current dispute, (Tr. 1528). Moreover, as already indicated, the over-all train time is being reduced, without consequent reduction in engineers' time on duty. Specifically, the average running time East and West which in January 1926 was fourteen hours and thirteen minutes, and twelve hours and eighteen minutes, respectively, was in October 1940 eleven hours and twenty-six minutes, and ten hours and fifty-four minutes, respectively, (Ex. 31, p. 3; Tr. 1535-1536). The times on duty for the same months and years were fourteen hours and fifty-two minutes, and thirteen hours and twenty minutes, and twelve hours and forty-two minutes, and twelve hours and eight minutes, respectively, (Ex. 31, p. 3; Tr. 1531-1533-1534-1535). As a direct result of C. T. C. installation and a change in the operating methods of running the helpers through, the average time on duty has been greatly reduced. For example, in March 1943 the average time on duty eastbound was twenty hours and forty-four minutes; the average time westbound was seventeen hours and forty-six minutes. Compare these times with those for October 1943 (sixteen hours and fifteen minutes, and fifteen hours and eight minutes, respectively) and there is indicated a reduction of four hours in average time eastbound, and more than two hours westbound, (Tr. 1401, Ex. 31,

p. 4). (Note: C. T. C. operation was placed into effect sometime between March and October 1943; hence, the comparison between March and October of that year.) War conditions have increased both the running time and the time on duty, (Ex. 31, p. 4) but return to normal peacetime conditions should make possible progressive reductions.

The Carrier contends that the instant request is basically one for increased earnings for decreased effort, despite protestations of the Organization that the engineers would gladly accept less total wages under the proposal in order to safeguard health and leisure, (Tr. 1528). The true purpose of the request is the Carrier claims: (a) to transfer to engineers residing at or having their home terminal at Bakersfield, a portion of the work of the through trains, all of which is now performed by engineers with home terminal at Los Angeles; (b) to obtain for such engineers compensation for a minimum day of 100 miles, although actual service involves only 68 miles; (c) in certain circumstances to obtain for helper engineers in the Bakersfield helper pool an extra day and consequent higher compensation if they are run through Mojave in eastbound helper service, (Tr. 1528).

Finally, the Carrier urges, that the disadvantages of the acceptance of the Organization's proposal would greatly outweigh any advantages that might conceivably accure from it; the movement of through traffic in both directions between Bakersfield and Los Angeles would be retarded at least one hour per train, probably more; work now performed by engineers having home terminal in Los Angeles would in part be transferred to other engineers having home terminal at Bakersfield; or, alternately, engineers at Los Angeles would have to transfer their home terminal to Bakersfield, with the necessity of finding homes or other accomodations there. This would occasion inconvenience and hardship for such engineers.

The Carrier sums up the claimed disadvantages to it which would result from the change as follows:

Not only would the Company have to face a manpower problem in adding thirty or more engineers to the pool, as already indicated, but it would also have to abandon the present efficient method of operating eastbound and westbound helpers through Mojave, or face the alternative of heavy additional compensation to the helper engineers because of the necessity of operating them through the new district terminal. This would involve the substitution of an uneconomical operating plan for an economical one, which cannot be justified in peace times, much less in time of war. Such a change would seriously interfere with the successful and

effective prosecution of the war effort. Even the relatively few engineers who might obtain some small benefit because of a reduction in their time on duty would suffer the disadvantage of a reduction in their individual earnings, (Tr. 1529-1530). Furthermore, the change, it is claimed, would largely nullify the great expenditures made since 1925, such expenditures being made on reliance that all the operating crafts had accepted the elimination of Mojave as a pool freight and district terminal.

VII

DISCUSSION AND RECOMMENDATION

The reason given by the Organization for the request for reestablishment of Mojave as a pool freight and district terminal is that such change would cut down the over-all time on duty and give the men more time at home. The Carrier thinks the real motive is to permit those engineers whose home is at Bakersfield to obtain some of the work that goes to men who have their homes in Los Angeles; that incident to that purpose if the 166.4 mile run from Bakersfield to Los Angeles were split into two runs, one of 67.8 miles from Bakersfield to Mojave, the other 99.1 from Mojave to Los Angeles, it would give two days' pay of 100 miles each, instead of the present 75 miles between Bakersfield and Mojave (part constructive mileage) and the 100 miles between Mojave and Los Angels, i. e. 200 miles as against a present 175 miles. The organization counters that supposed additional permanent benefit which the men would gain under the change is largely illusory, because the overtime they now make costs the Company more than the extra twenty-five miles which it would have to pay if the run were split, or if the engineers were run through the District Terminal at Mojave, if it were established as such. It should be noted in passing that if the Company did run the engineers through such terminal, paying two minimum days, the overtime would probably also accrue, because the through running time would not be cut down by running an engineer through this terminal.

It is quite difficult for the Board to divine motives back of requests, and in this case we must assume that the reason given by the Organization for the request, to-wit, to shorten the men's overall time on duty, is sincere. There is no doubt that the overall time on duty on this Bakersfield-Los Angeles run, both east and west, is long. Added to the duty time is the time in cleaning up when the engineer gets home and the time in coming and going to his work, and in certain cases the deadhead time in returning home to Bakersfield. This is well illustrated by Exhibits "H", "I" and "J", which respectively show the hours on duty during the months of May to October 1941, both inclusive for every train, (Ex. "H") the hours on duty for each train during the month of March 1945 (Ex. "I"), and the tie-ups under the Hours of Service Law for the months of March and October 1939, 1940, 1941, 1942 and for each month of the year during 1943, 1944 and to April 25, 1945 (Ex. "J"). These will be discussed in some detail later. Suffice it to point out now that especially since 1941 the hours on duty without adequate relief for rest on this run have been longer than is desirable even in the railroad industry where tours of duty must accomodate themselves, as far as operation is concerned, to the very nature of the industry and largely to the conditions of traffic.

The Organization attempted to establish the fact that the health of the men had suffered on account of these long hours, but proof as to that was very inconclusive. We are not unmindful that the strain of long hours may ultimately make its contribution to health deterioration, but men vary so greatly in their general health and power of resistance that the incidence of occupational strain is difficult to trace, unless it is of such a nature and so marked as to permit of fair accuracy in ascribing effect to cause. Admittedly, long hours in service without rest over an extended period of time do contribute to health deterioration, especially in older men. But aside from the health factor, it is desirable from the standpoint of the general welfare that the work of men be so arranged, as far as possible, so as to permit them to be with their families for reasonable periods without too long intervals intervening. Home life and recreational opportunities play their part in good citizenship, contentment and health.

With these observations in mind we turn to the problem at hand. The Carrier points out that only after it made settlement with the conductors and trainmen and had the acquiescence of the firemen's and engineers' organizations on the San Joaquin District to the elimination of Mojave as a district terminal did it commit itself to a program of expenditure and improvement. This sets up a defense in the nature of an estopple. In 1925 when the two organizations acquiesced in the elimination of Mojave they had knowledge of the combined time it took to make both the trips with Mojave as a terminal. They must have known that the average time on duty west from Bakersfield to Mojave during 1924 ran between six and seven hours, and east from Mojave to Bakersfield from five and one-half to around six hours, and from Mojave to Los Angeles from nine to eleven hours, and from Los

Angeles to Mojave from about nine to eleven hours, being seldom under nine hours. (Ex. 31, Sheet 1.) They would be expected to know that the combined times on duty west have run from seventeen to nineteen hours, and east in the neighborhood of sixteen hours, without counting the delay at Mojave. No doubt they had reason to expect improvement if the two runs were combined into one, and that is what actually happened. In 1926 the average total time on duty ranged from thirteen hours in July of 1926 to fourteen hours, fifty-two minutes in January of the same year, running east; and between twelve hours, twenty-eight minutes in November to thirteen hours, thirty-seven minutes in September, running west, (Ex. 31, Sheet 3). This was before the installation of C. T. C., which was put into operation in 1943. It would seem, therefore, that the men were not ignorant of what they might expect. While consent or acquiesence would not bind men in perpetuity, certainly we would be somewhat more hesitant in recommending a change after the Carrier had made large expenditures in reliance on such acquiescence, unless it appeared that conditions had changed materially for the worst and were approaching intolerability. But the request of the Organization must be denied for more fundamental reasons.

It appears from Exhibit 31, Sheet 3, that the running time of trains between Bakersfield and Los Angeles was decreasing up to 1941. Taking the months of March and October for the years 1929, 1936, 1939 and 1940, the average time on duty with some fluctuations, running east, decreased from thirteen hours and fifty-five minutes in March of 1929 to twelve hours and twenty-seven minutes in March of 1940; and west from thirteen hours and thirty-eight minutes to eleven hours and forty-eight minutes. These average times increased again from 1941 on to March 1943 and especially, for some not too definite reason, in October 1942 and March 1943, possibly due to winter conditions in the Tehachapi mountains, (Ex. 31, Sheet 4). Between March and October of 1943, C. T. C. operations were installed on the single track between Bena and Tehachapi, which resulted in some improvement even under the buden of increasing traffic, (Ex. 31, Sheet 4). The results of the C. T. C. must be viewed in the light of Ex. 32, which shows the total yearly east and west gross tonnage per mile of road moving over the Bakersfield-Saugus territory from 1923 to 1944. In 1939 it was 6,020,000 gross tons; in 1940, 7,149,000 gross tons, in 1941, 1942, 1943 and 1944. 9,957,000, 12,320,000, 10,924-000 and 11,953,000 gross tons, respectively. These figures do not include the tonnage hauled by the Santa Fe over the portion of the road from Bakersfield to Mojave. It appears, therefore, that the hopes of the Carrier to reduce the average time on duty, after war traffic conditions abate, from two and a half to three hours from present times, is not unwarranted. The Company should be given an opportunity to demonstrate whether that can be done. We think that there is a fair probability of equalling or bettering the records made during the months of March and October of the years 1939 and 1940 which fairly reflect the normal pre-war or intensive pre-preparation period of our economy, (Ex. 31, Sheet 3).

We do not think it would be wise to ask the Carrier to establish a terminal at Mojave at this time when it is confronted with the task of handling exceptionally heavy tonnage with limited manpower. While the tieup under the law rose to considerable heights during the months of January, February, March and April, 1943, the effect of C. T. C. made itself felt from that time on. While they are far more than could be desired, there is a fair expectation that they may, after the war traffic subsides, go back to the low figures of 1939 and 1940.

The stretch from Bakersfield to Los Angeles constitutes one of the two main arteries of north and south transportation of this Carrier. It is one of the most heavily traveled portions of its system. It may be expected to make every effort to handle the traffic here in such manner as to expedite it so that it does not become the neck of the bottle, and this entirely independent of the desireability to lessen the continuous hours on duty of its operating employees.

The Carrier argues that many of the benefits of its large investments will be nullified if the change requested is made, the Organization answers that the change could not mean that all improvements, and especially the C. T. C. (Centralized Traffic Control) would not be as useful in moving traffic as at present. All that it would require, says the Organization, would be a change in crews at Mojave. The same train, the same locomotive would continue on. Outside of a multiplication of opportunities for delay, which is always a factor when fresh crews must be assembled in the middle of a total run, we think the Organization may be substantially correct. It is significant, however, that in 1901 and 1907 when the crews worked over the entire district the average layover at Mojave was considerably less than in 1908, 1913, and subsequently up to 1925, when crews were cut out at Mojave, (Ex. 31, Sheet 1). And again, after 1925 to 1940, with the exception of October, 1937, the time at Mojave was around one hour, as against two to three hours previous to the elimination of Mojave back to 1908, when Mojave was made a terminal. But it is true that the C. T. C. would be just as efficacious to move trains from Bakersfield to Mojave whether engine and train crews changed at Mojave or not, but the costs to the Carrier would, we think, be materially greater in peace time owing to the increased compensation entailed in the two runs over the one now made. We would expect the overtime to disappear, but an increase in straight time for more men would be a considerable item. We think that the Carrier should do what it can to alleviate the long hours on duty on this run, even during these war conditions, but that the engineers should be willing to carry on for a time until the Carrier has a chance to demonstrate what it can do in normal times with the C. T. C., which has been of great aid during war time and can be reasonably expected to aid in cutting the time when train interferences decrease.

The fact that there are men handling this run who could have exercised their seniority and gotten a valley run to Santa Barbara or Fresno is some proof that the pecuniary opportunities and the chance of better hours in the future on this run outweigh, for some at least, the hardships, and that the hours, even with the tie-ups, are not now so intolerable as to cause them to desert the run.

RECOMMENDATION:

That the request of the Organization be denied without prejudice to renew it, if after a fair period of trial after the return of normal peace conditions the average hours on duty over a period, taking in both summer and winter conditions, are not decreased below the average from October 1943 to February of 1945 at least two hours.

CASE A-1370—ITEM NO. 1

I

ORGANIZATION'S REQUEST

The Brotherhood made request as follows:

> All steam locomotives operating on ascending grade through tunnels will be equipped with suitable respirators for the use of engineers; smoke stack deflectors will be applied; not more than two helper engines will be used on trains operating on ascending grade through tunnels; and tonnage will not be more than will permit a minimum speed of twenty (20) miles on ascending grades through tunnels. (Ex. "B", 2-3.)

II

HISTORY OF THE DISPUTE

Discussion of the problems involved in this case goes back to about the year 1929. The specific problems of gas, smoke and heat in tunnels and the proper spacing of engines to mitigate the alleged ill effects of these conditions were the subject of communications and conferences between representatives of the parties during 1941. The fatal accident in the Chatsworth Tunnel on November 19, 1941 stimulated the discussion during the balance of that year.

On January 19, 1942 the Organization served the Carrier with thirty days' notice, under the provisions of the Railway Labor Act, for the purpose of negotiating the rule set forth in the above request. On January 28, 1942 the Carrier declined a conference for this purpose on the grounds of the moratorium provided in Section 8 of the Mediation Agreement signed at Chicago on December 5, 1941. The Brotherhood subsequently invoked the services of the National Mediation Board. Because of the failure of the parties to adjust their differences through the channels of mediation or arbitration, the dispute was heard by the present Emergency Board at San Francisco May 3-8, 1945, (Ex. "M", 18-23).

III

THE ISSUES

The several issues in this case are related. The basic inquiry is whether there are physical ill effects from the smoke, gas and heat emitted from the engines during their movements through tunnels, and if so, whether they are sufficiently deleterious or discomforting to the men to warrant the changes in technical equipment and methods of operating demanded by the Organization. There are several pertinent inquiries in this matter. (1) What positive and concrete evidence is there that the emission of gas, smoke, steam, and heat from steam locomotives in tunnels affects adversely and noticeably the health and comfort of engineers? (2) To what extent and in what ways has the Carrier endeavored to provide adequate respirators and appendages for deflecting smoke from the engine cabs? (3) Is the reduction of helpers feasible in view of the methods of operation, and are the effects of the smoke, gas and heat in tunnels so deleterious to the physical well-being of the men in normal operation so as to warrant a reduction in train tonnage to a point where two helpers would push it over the grades? (4) A question closely related to (3) as to whether a reduction in tonnage so as to make possible a minimum speed of twenty (20) m. p. h. on ascending grades would solve the difficulties herein considered. This includes a consideration of the question as to whether the relief afforded by the differences in the periods in which the trains are in the longer tunnels at the twenty (20) mile speed as compared to present speeds would be such as to warrant the increased difficulties entailed in the handling of traffic. (5) Is such a rule desirable and practicable, either under the extraordinary present war conditions, or in the more normal operating conditions which may reasonably be expected in the not-far-distant future?

IV

TUNNEL TERRITORY

Involved in this case are freight train operations in five main-line districts of the Company's Pacific System. These include the following: Coast Division between San Luis Obispo and Santa Margarita; San Joaquin Division between Bakersfield and Los Angeles, including the Hueneme Branch; Los Angeles Division between Los Angeles and Santa Barbara; Portland Division between Eugene and Cascade summit; Shasta Division between McCall and Steinman, and Sacramento Division between Roseville and Sparks. Collectively, these specific areas are approximately described as "tunnel territory" which fact is central to the Organization's request, (Tr. 2512-2513).

While there is a total of 179 tunnels in the Carrier's Pacific System, apparently only the longer tunnels are involved in the creation of the alleged acute aspects of the problems under discussion, (Ex. 38). The shorter tunnels ordinarily do not contribute to the unsatisfactory conditions complained of by the Organization. The 179 tunnels of the Pacific Lines have a total length of 190,907.13 feet or 36.19 miles, (Ex. 37). Out of the total of 179 tunnels, there are some 54 which are 1000 feet or more in length with an aggregate length of appoximately 26,000 feet, (Ex. 37). The problem is posed by considering the aspects of the smoke, gas and heat in the longer tunnels. The short tunnels, unless they come very close together, do not present a serious problem. The longer tunnels listed according to divisions are as follows:

Sacramento Division:
    Tunnels No. 28—3208.86 ft; No. 41—10,325.10 ft. (Ex. 37)
Shasta Division:
    Tunnel No. 1—2719.0 ft; Tunnel No. 2—2552.63 ft.
    Tunnel No. 10—2243.0 ft; Tunnel No. 17—2070.00 ft.
    Tunnel No. 13—3107.00 ft. (Ex. 37)
Coast Division:
    Tunnel No. 3—2304.00 ft; Tunnel No. 4—3547.00 ft.
    Tunnel No. 6—3610.33 ft. (Ex. 37)
Portland Division:

Tunnel No. 3—3654.61 ft; Tunnel No. 7—3164.00 ft.
Tunnel No. 16—2213.41 ft; Tunnel No. 14—2121.43 ft. All on Cascade Line.
Tunnel No. 8—2811.00 ft; Tunnel No. 9—2104.00 ft. on Siskiyou Line.
Tunnel No. 13—2488.66 ft; Tunnel No. 15—2132.91 ft.
Tunnel No. 19—4182.91 ft. on the Coos Bay Branch. (Ex. 37)

San Joaquin Division:
Tunnel No. 29—4340.00 ft. on the Owenyo Branch. (Ex. 37)

Los Angeles Division:
Tunnel No. 25—6976.00 ft.; Tunnel No. 26—7368.99 ft. (Ex. 37)

V

Arguments of the Parties

1. *Position of the Brotherhood*:

In support of its request that the problem of smoke, gas and heat in tunnels be mitigated by the provision of an adequate supply of effective respirators, the equipment of engines and smoke stack deflectors, the use of not more than two helper engines on trains operating on ascending grade through tunnels, and the reduction of tonnage to a point that will permit a minimum speed of 20 miles on ascending grades through tunnels, the Organization advances the following contentions:

(a) In view of the deleterious effect of smoke, gas and heat upon the health and comfort of engineers, the desirability of a sufficient quantity of suitable respirators is almost self-evident. There is said to be a definite casual relation between these factors of smoke, gas and heat and the frequency of layoffs due to illness, (Tr. 1878-2507). Men are said to be overcome by heat and gas in tunnels, despite the Carrier's efforts thus far to discover suitable gas masks, (Ex. "N", 9). Cited in support of health and safety hazards involved in such conditions is the accident which occurred on November 19, 1941 when a freight train stalled in a tunnel on the line of the Southern Pacific Company near Hesson, California. It appears that fuel became ignited and excessive smoke and gas resulted in the death of two trespassers and three employees, and the injury of four additional employees. Ten carloads of cattle that were from ten to twenty cars behind the engine were all dead when taken out of the tunnel, (Ex. "N", 12-17; Tr. 1687-1688). Engineers appeared as witnesses to testify to the alleged fact that the heat in tunnels becomes so great that sometimes men's skin and flesh are burned and that layoffs caused by illness and permanent injury resulting from smoke and gas are frequent, (Tr. 1738; 1742; 1748; 1851-1853; 1878). It is alleged that suitable respirators in adequate numbers have not been provided, (Tr. 1689-1690) nor properly serviced by the Company.

(b) Apart from the A. C. (cab-ahead) type of engines, which are excluded from this part of the request, the Organization holds that smoke-stack deflectors are indispensable in order to minimize the dangers to health, life and safety incident to the emission of smoke, gas and heat in tunnels. In consequence, the Organization is asking for attachment of smoke-stack deflectors to "all conventional" type engines, i. e., those engines with smoke-stack ahead, (Tr. 2507).

The Organization alleges that despite the fact that men are overcome and frequently have to lay off on account of the ill effects of smoke, gas and heat in tunnels, the Company has not provided an effective respirator, nor has it adequately serviced the respirators in use, (Tr. 1689-1690, 1748, 1755, 1817-1819, 1841, 1851, 1852, 1878, 1893, 1909). Not until 1940, the Organization points out, was the charcoal filter in the air tank developed, and even now this device is confined to the A. C. (cab-head) tye of engine, (Tr. 2161). This device is for the purpose of filtering out the oil and solid particles which are taken in the air tank from the tunnels and if not filtered out come up through the respirators.

(c) The Organization is of the opinion that the provision of an adequate supply of suitable and properly serviced respirators, and the addition of smoke-stack deflectors will not fully solve the problem. It maintains that the problem will not be adequately solved until helper engines are limited to not more than two on trains operating on ascending grade through tunnels, and tonnage reduced so as to make possible a minimum speed of twenty (20) miles an hour on ascending grades through tunnels, or ventilation by fans and vents is provided, (Tr. 1734-36). Reduction of the number of locomotives on a train will, the Organization contends, necessarily reduce the amount of smoke and gas in a tunnel, (Tr. 1699).

A supplementary requirement is the proper spacing of engines in trains. For example, on the San Joaquin District line between Bakersfield and Los Angeles the Organization has requested that engines be spaced sixteen (16) cars apart in freight trains, instead of eight (8) cars apart, which is alleged to be the practice, (Ex. "M", 2). The Santa Fe, it is urged has a rule which requires not less than thirteen (13) cars between helper engines and all engines on that road have deflectors. The Santa Fe, it is shown, operates over the Southern Pacific tracks between Mojave and Bakersfield, (Ex. "M", 1-2). The spacing of engines is especially necessary, the Organization argues, since increasingly large and more powerful locomotives are used in freight service. Helper engines often have to follow the A. C. type of engine, which throws off twice as much heat, it is claimed, as the 2-10-2 type, or the Santa Fe 3800 class, (Ex. "M", 2).

The reduction of tonnage is, the Organization asserts, a certain solution of the problems under consideration, because engineers' experiences demonstrate that the faster a train is operated with the locomotive working at full capacity, the less are the ill effects from smoke and gas. Whereas, in the longer tunnels at ten (10) m. p. h. the crew is enveloped in smoke during its entire course through the tunnel; at twenty (20) m. p. h. escape from smoke and gas is possible because the engines are not in the tunnel as long, (Tr. 1699; Ex. "M", 9, 10).

The Brotherhood believes that the Carrier has not exploited the possibilities of scientific research to solve the problems; that the Carrier has not, until recently, availed itself of the cooperation of the U. S. Bureau of Mines, (Tr. 1731). Only now, the Organization states, is the Carrier conducting in Tunnel No. 6 on the Coast Division, which is about 3610 feet long and has a ruling grade of 2.2, an experiment with a smoke gallery (Tr. 2509-2510). The Organization points out that although the Carrier claims to have given this problem of smoke, gas and heat consistent attention, the fact remains that it has no scientific department, but only a solitary fuel engineer devoting only part time to the problem; that there is no research staff and no special appropriation, but only one man attached to the general manager's office (Tr. 2134, 2066).

(d) The Organization maintains that its proposals to limit the number of helper engines in trains and properly space them, and reduce tonnage to make possible a minimum speed of twenty (20) miles on ascending grades, and provide an adequate supply of suitable respirators, and equip the engines with deflectors, constitute a practical program for the reduction of the ill effects and discomfort resulting from the emission of smoke, gas and heat in tunnels to the irreducible minimum, (Tr. 2505-2511).

2. *The Carrier's Position*:

Although the Carrier apparently recognizes the problem of smoke, gas and heat in tunnels and claims to be alleviating the unfavorable conditions as rapidly as practicable, it nevertheless deems it imperative to oppose the instant request of the Organization on the general grounds that its acceptance would seriously threaten, if not nullify, the Company's efforts to increase efficiency of operation and improve the conditions concerning which the enginemen complain. Specifically, the Carrier makes the following contentions:

(a) In the ordinary or normal operation of freight trains through tunnels on ascending grades engineers do not experience such intolerable or hazardous conditions of heat, smoke or gas emitted by locomotives as the Organization describes, because with the engine working on hills almost complete combustion of fuel is obtained, and only insignificant quantities of smoke or injurious gases are present in the exhaust (Tr. 2513).

Moreover, the Carrier states, the quantity of fuel per 1000 gross ton miles has steadily diminished. Whereas, in 1912 a freight locomotive consumed 16.50 gallons of fuel per 1000 G. T. M., in 1944 the amount was only 8.54 per 1000 G. T. M., a difference of 7.96 gallons per G. T. M. For passenger locomotives, the fuel oil consumption in 1912 was 19.22 per 1000 G. T. M., while in 1944 it was only 9.43 gallons per 1000 G. T. M., a reduction of 9.77 gallons per G. T. M. The average total freight and passenger service fuel oil consumption in 1912 was 17.51 gallons per G. T. M., while in 1944 it was only 8.75 gallons, a decrease of 8.75 gallons per G. T. M. (Ex. 52). This, the Carrier claims, is due to a greater utilization of the energy of the fuel by more complete and efficient combustion.

Moreover, the Company points out, the heat developed as trains pass through tunnels is not normally excessive and is of such short duration that only temporary discomfort is experienced by crews. Nor is there any evidence, the Company asserts, of death or serious injury to employees resulting from smoke, gas or heat alone in its tunnels in the course of normal operations and exclusive of other contributory factors, (Tr. 2513-14). Over a period of seven years (1938-1945), there were only four cases of reportable casualties involving personal injury to engineers allegedly due to effects of heat and gas in tunnels, (Tr. 2057-2060).

(b) With regard to respirators, the Carrier contends that not only has it developed and supplied adequate respirators, which provide a substantial measure of relief from heat and smoke conditions, but has also continued to experiment with new devices and methods calculated to reduce to a minimum the ill effects and discomfort complained of by the engineers (Tr. 2054-2056, 2514). Carrier's Exhibit No. 40 presents diagrammatic and photographic descriptions of respirators which the Company has, with the cooperation of certain of its locomotive engineers, developed and supplied. These are said to be available at engine houses in the territory under consideration and to be placed in engine cabs, although some engineers prefer to carry and care for their individual respirators.

The Carrier warns of inevitable disputes if the Organization's request is granted, principally on account of the use of the word "suitable" in the formulation of the request. Endless debate is seen over what constitutes a "suitable" respirator (Tr. 2514-2515).

(c) Concerning the application of deflectors to *all* locomotives, except the cab-in-front or A. C. type, the Carrier contends that this part of the Organization's request, like the demand for respirators, is totally unnecessary and impracticable. Engines other than A. C.'s regularly assigned to freight service in tunnel territory are equipped with the necessary deflectors, which afford a significant additional measure of relief to engineers from the nuisances of smoke and heat. But, the Carrier urges, deflectors cannot be applied to the G. S. or Mountain type engines which have the skyline or streamline casing, because such action would destroy the effect of these improvements and, in the case of G. S. engines, would exceed tunnel clearance limits (Tr. 2515). In support of its contention that everything is being done to provide adequate and necessary deflectors, the Carrier presents detailed diagrammatic and photographic descriptions of such devices (Ex. 39-51; Tr. 2056-2057; 2207-2211).

The Carrier further insists that acceptance of the Organization's request would nullify the benefits now issuing from the use of skyline casing. In brief, the Company regards the Brotherhood's proposal as to deflectors not only as unnecessary, but actualy detrimental to progress in abating the nuisance of smoke and gas in tunnels (Tr. 2516).

(d) The Carrier vigorously opposes the Organization's proposal to limit helpers to two per train on ascending grade through tunnels as indefensible and as nothing but a concealed attempt to obtain shorter trains and thus more jobs. In those districts where more than two helpers are now used, the inevitable effect would be either to slow down the movement of the individual trains or compel the reduction of the tonnage of each train, and, consequently, require operation of more trains, thus increasing train "meets". The net result of the latter would be to retard all trains in the district, because of the resulting interferences (Tr. 2616-2517).

The Carrier asserts that the approval of the Organization's proposal would prove detrimental to efficient operation of trains and, in the light of the Company's established policy of spacing helpers in trains, is wholly unnecessary (Tr. 2516-2517). Efficient operation would be interfered with between Colfax and Norden, which the Organization now finds highly satisfactory, and even on the Tillamook Branch of the Portland Division, and on the Siskiyou Line where a greater number of helpers is imperative and concerning which no complaint is made in the present case (Tr. 2516-2517). The Carrier urges that multiplication of trains here, as elsewhere, would cause an increase in interferences (Tr. 2525).

The Carrier further argues that no benefit or advantage can possibly accrue from acceptance of the Organization's proposal which is not already available through the Company's consistent and long-applied policy of spacing trains. The increase in the number of trains not only would cause an overloading of the lines, but in the San Joaquin District, for example, where it is said that traffic has approached the saturation point, would result in reduced speeds, which supposedly would contravene the very purpose of the Organization in wanting greater speeds. In separating helpers by a sufficient number of cars the Company insists it is reducing whatever concentration of heat and exhaust gas may exist and so is achieving the alleged objective the engineers have in mind in advocating a limit in the number of helpers (Tr. 2526). On the San Joaquin Line, the Carrier points out, the Company's policy is to so space cars as to permit a minimum distance of 750 feet between any two engines in the train.

The result of this practice is that in only one tunnel between Bena and Tehachapi is it possible for two locomotives to be within a tunnel at the same time as the train is passing through, and then it is only for a few seconds (Tr. 1925). The A. C. type helper on this line is usually spaced fifteen (15) cars from the Mikado, or conventional type, which is only one car less than the sixteen-car spacing the Organization has asked (Tr. 2305-6; Ex. "M", 1-2). If the engineers' proposal were granted, the Carrier states it would sacrifice from fifty to eighty per cent of operating efficiency over certain grades (Ex. "O"; Tr. 2307).

Nor must it be forgotten, the Company warns, that the unnecessary addition of train units resulting from the Organization's proposal would seriously increase the hazards of accidents and casualties incident to train operation. An increasing number of yard maintenance and crew employees would be exposed to accident risks, and the probability of train collisions would be greatly enhanced (Tr. 2308-2309).

(e) The Organization's proposal to reduce tonnage so as to permit a minimum speed of twenty (20) m. p. h. is, the Carrier insists, totally indefensible on several grounds. In the first place, the proposed tonnage reduction would increase the number of trains, thus increasing the number of interferences and so greatly retarding train movements as to defeat the very purpose of the proposal, to say nothing of the contravention of the Company's efforts to speed up such movements through the installation of C. T. C. and other traffic control and operating aids (Tr. 2517). Moreover, the Carrier asserts that in certain of the districts involved in this case the maximum speed is twenty (20) m. p. h. because of track curvatures; that this indicates the practical impossibility of the proposal, because it contemplates a minimum speed equal to the safe allowable maximum (Tr. 2517, 2311); that the speeds which it currently maintains are sufficient to preclude any abnormal degree of discomfort from heat and smoke in tunnels (Tr. 2312).

The Company's large investments in facilities, equipment and operating methods designed to mitigate the alleged heat, smoke and gas nuisances would, it states, be nullified and urgently needed operating efficiency would be lost, if the Organization's proposal were approved (Tr. 2312-2313).

Finally, the Company contends, the theoretical benefit which the proposal allegedly would provide is trivial and entirely disproportionate to the burden of operating interferences and inefficiencies that inevitably would ensue therefrom (Tr. 2517); that taking into account the current safe allowable speeds and the proposed minimum of twenty (20) m. p. h., the differences in tunnel exposure would be almost negligible. The following examples are cited by the Carrier in support of this contention: On the Tehachapi grade, where speeds now range from seventeen (17) to eighteen (18) miles per hour, the differential in time in the longest tunnel, No. 5, would be only four and one-half seconds; on the Coast route in Tunnel No. 7, where the speed is now sixteen (16) miles per hour, the differential would be eleven seconds; in Tunnel No. 6 on this same (Coast) route, the differential would be about thirty seconds; and on the Cascade route in Tunnel No. 3, which is the longest tunnel, the differential would be thirteen seconds (Tr. 2517-2518; 1897-1899).

VI

Discussion and Recommendation

The request consists of four parts (1) Suitable respirators; (2) smoke-stack deflectors; (3) maximum of two helper engines; (4) minimum speed of twenty (20) m. p. h. through tunnels. These propositions will be considered in reverse order.

A minimum speed of twenty (20) m. p. h. would require a reduction of train tonnage or more helper engines. More helper engines would be against the request that such engines be limited to two and would increase the smoke and gas emitted in tunnels.

A decrease in train tonnage would undoubtedly mean more trains and thus more train interferences with the consequence of slowing up traffic. It is doubtful whether if such were to be done the speed of twenty (20) miles through tunnels could in many cases be maintained. Where the train was compelled, because of interference in single-track operation, even in centralized traffic control territory, to stop or to reduce speed in taking sidings, it might not be able before reaching some tunnels to increase speed to twenty (20) miles, even with such reduced tonnage as two helper engines would take care of, unless the tonnage were so far reduced as greatly to increase train interferences.

The Carrier claims that between Bakersfield and Los Angeles during this war period traffic has increased to about the saturation point; that the traffic has increased materially since 1939 is revealed by Exhibit 32. Besides the tonnage there shown, Santa Fe tonnage between Bakersfield to Mojave is also handled. Certainly an increase may be expected since the war has shifted to the Pacific. During normal times the traffic may be expected to be less, but we do not think the conditions in the longer tunnels are so intolerable as to warrant such a major limitation on train operation as is asked for in this request. That is not to say that the problem of smoke, gas and heat in long tunnels does not exist or that it is of negligible consequence, and that every reasonable measure should not be taken to minimize it. We are not convinced, however, that the tunnel conditions are a serious menace to health in normal operation. We are not here dealing with the situation where a train is stalled in a tunnel.

No reduction of tonnage would avail to take care of situations such as that. We are dealing with normal operation. Management calls attention to the fact that in the last seven years there were only four reportable (reportable to the I. C. C. under its regulations) injuries due to the effects of gas and heat in tunnels (Tr. 2057). One of these was due to train stoppage due to heading in at Cruzatte, a condition which has been corrected to obviate stoppage.

Another was in regard to a two-helper train when it stalled in Tunnel No. 7, Portland Division. Tonnage of this train was only sixty-seven per cent of its total rating. A third was the unfortunate Chatsworth Tunnel accident in Tunnel No. 25, near Hasson, California, due to stalling in a tunnel because of break-in-two, no helpers and less than full tonnage rating for the engine, caused by failure to shut off oil feed (Tr. 2058-2060).

The fourth occurred also by a stall in the tunnel due to a break-in-two, in Tunnel No. 25 at Newhall, California. Thus, it appears that all of these were due to stopping when there were not more than two helpers and the engines were not pulling capacity. These sustain the conclusion that had the rule asked for been in effect and the train tonnage reduced, the same accidents might have happened, and that reportable injuries due to heat and gas in tunnels have happened. Again we say that we are not unmindful that smoke, gas and heat in tunnels under normal operation is a source of considerable discomfort to the enginemen and trainmen, and may not be without its effect on health, but as to the latter, the effects would be quite difficult to trace because of the difference in the resistance of men and the many other factors which may bring about health deterioration. The Company states that class for class its engineers seem to enjoy better health than other classes of employees.

The Company has never made any thorough-going study of the content of the stack emissions in its tunnels to determine the per cent of carbon monoxide or dioxide gas and other gases under different atmospheric and tunnel conditions. The reason given for not doing so was that tunnels had been in use for more than seventy-five (75) years with no noticeable effect on the crews manning the trains.

In connection with the consideration of limited helper service and decreased train tonnage as a cure for smoke and gas in tunnels, attention should be called to the fact that operating conditions on the districts vary. The proposed rule would be inflexible. In some tunnel territory where it is imperative to operate more than two helpers there is no serious difficulty with smoke or gas. For instance, on the Tillamook Branch in Oregon there are ten tunnels varying from 179 to 487 feet. This line handles heavy log movements and contains some of the steepest grades in the system, and to handle the normal business it takes from five to six helpers operating with the type of locomotive there used. The shortness of the tunnels presents no serious gas and smoke problem, yet under the rule the trains would have to be operated with no more than two locomotives. Again, eastbound trains are operated out of Roseville with full tonnage with one or two helpers. Another helper and sometimes two are added at Colfax to handle the train to Norden. Engineer Schroder testifying for the Organization said this method of operating was satisfactory from the engineer's standpoint. The rule as proposed would not permit that admittedly satisfactory method of operation.

Moreover, due to curvatures, allowable maximum speeds over ascending grades vary over the divisions on which exist tunnel territory from fifteen (15) to thrity-five (35) m. p. h., depending on road conditions.

In certain cases it would be impracticable, if not impossible, to gain speed from the maximum now allowed because of those road conditions in certain locations to a minimum of twenty (20) m. p. h. at tunnel entrances. In certain portions of the San Joaquin district between Bakersfield and Los Angeles the maximum speed is twenty (20) m. p. h. In those stretches under the rule the maximum would have to be the minimum. Theoretically, a speed of twenty (20) miles, no more, no less, would have to be maintained.

The Organization states that the use of larger and more powerful engines and the use of helpers in assisting the larger tonnaged trains over the grades have increased the smoke, heat and gas nuisance.

The Carrier points out that the locomotives under heavy pulling on ascending grades when fuel is properly fed and the locomotive is in condition, omit very little injurious smoke or gas because of more complete combustion. It admits that the motive power has become heavier in latter years, but denies that the bigger locomotives emit more smoke or gas, and in substantiation points out the decreasing incidents due to technological improvements and more efficient use of fuel. This seems to be borne out by Exhibit 52 which shows the number of gallons of fuel oil used per gross-ton mile from 1912 through 1944.

It is to be hoped and expected that the study presently being conducted by the U. S. Bureau of Mines in connection with Western Railroad Tunnel conditions, which study contemplates in due time cooperation in this matter with the instant Company, will yield some scientific data in that regard.

Lastly, it is doubtful whether the difference in tunnel exposure due to the increased speed of twenty (20) miles over presently prevailing speeds would lessen the discomfiture to such a point where it would in most cases make any substantial difference. On the Tehachapi where the speed is seventeen (17) to eighteen (18) miles per hour, the difference in tunnel exposure in the longest tunnel, No. 5, would be four and one-half (4½) seconds. On the Coast Division in Tunnel No. 7, length 1354.25, the saving in time would be eleven (11) seconds if twenty (20) miles speed instead of the present speed of sixteen (16) miles were maintained. On the longest tunnel in that Division, No. 6, length 3615.33, the saving in time would be thirty (30) seconds. Admittedly, the first thirty feet and the last thirty feet in a long traverse have quite different consequences. In cases of suffocation, for instance, the last four seconds are the last straw which may produce death. But unless a train stalls, in which case the crew should make exit with all rapidity, in a long tunnel the conditions do not become anywhere near that desperate. The admitted discomfiture suffered during the latter part of the traverse due to accumulated exposure in long tunnels must be taken care of by proper respirators, a matter which we shall in a moment consider.

It is well to note before we leave that part of the request dealing with limited helper service and minimum speeds, that the local chairman at Bakersfield wrote the general chairman of the Engineers' Adjustment Board that "even if tonnage was reduced, the helpers would often be slowed down or stopped in tunnels by slow orders, waits and meets; therefore, reduction of tonnage, if true, would be nothing more than a flimsy alibi. What we are entitled to is the installation of deflectors and respirators and proper spacing of A. C. engines," (Ex. "M", Sheet No. 2).

Up to the time of the accident in Chatsworth Tunnel on November 19, 1941 the emphasis was placed on respirators, deflectors and proper spacing of helpers. After that accident, on December 5, 1941, W. R. Roland, Local Chairman, stated in the last paragraph of his letter to the General Chairman.

> The facts in this case (the Chatsworth Tunnel case) should be sufficient to convince anyone that no train should be permitted to operate through long tunnels which could not maintain a speed of not less than twenty (20) miles per hour, and that every protective device should be furnished enginemen.

He came to the conclusion from attending the hearing by the I. C. C. that the break-in-two was caused by the weight and length of the train, the steam producing a slippery track condition with intense slack action. The report of the I. C. C. lends support to the slack action as the immediate cause of the break-in-two, but according to the testimony of the front brakeman, the cylinder cock of the first engine was out of repair when the engine entered the tunnel, steam blew from the cylinder and was "deflected from the wall of the tunnel and undoubtedly this resulted in lessening the adhesion of the driving wheels to the rails."

The immediate cause of the deaths assigned by the I. C. C. was the heat and gas due to a failure to shut off the oil feed, but a careful reading of the report lends some credence to the view that the steam filling the cab may have so affected the engineer and fireman that they were unable to turn off the fuel feed valve. But in that case the tunnel was a very long one, over 7,000 feet, the train was moving at the time it entered the tunnel at about ten (10) miles per hour, and it appears that there was a faulty cylinder cock. The engineer experienced difficulty in closing the throttle.

After the Chatsworth accident instructions were issued that "unless the speed of the train approaching the tunnel is sufficiently high that there can be no question but what the train will go through the tunnel at a moderate speed, train should be stopped before any portion of it enters the tunnel and doubled to Hasson." Thus the Company recognized that speed was an element in safe operation through a long tunnel, but still denied that an arbitrary speed of twenty (20) miles throughout the system was necessary or practical. In that we agree. We must, therefore, conclude on this phase of the problem that a rule limiting engines on ascending grades through tunnels to two helpers and to a minimum speed of twenty (20) miles per hour is for system-wide purposes impracticable, unnecessary, and at points impossible, and that the limitation on tonnage due to such a rule would, in certain portions of the road, so increase difficulties of operation as to retard speed rather than permit the twenty (20) miles per hour; moreover, the detriment to the movement of traffic would be entirely incommensurate to the benefits which would be obtained by the twenty-mile speed if it could in all cases be obtained.

We move on to a consideration of that part of the request that deals with the requirement of "suitable respirators" and application of smoke-stack deflectors.

DEFLECTORS

Under the generic head of deflectors can be included the elbow type (Ex. 43), clam-shell type (Ex. 45). These two types are true smoke deflectors. They deflect the smoke backward and over the top of the cab, thus preventing it from coming down into the cab. The head engine gets the benefit of this, but helpers in the middle and back of the train must go through the smoke and gas in the tunnel left by the preceding locomotives.

Other devices for deflecting smoke are the "splitter" (Ex. 47). This deflects smoke sidewise rather than backward and over the train, and is applied principally to the A. C. type of locomotive. Another type of deflector is the smoke lifter (Ex. 49). It is built in and used with skyline casing. "The action of the smoke lifter and skyline casing is to scoop air at the vicinity of the smoke-stack and by action of this air scooping deflect the exhaust upward and over the steam dome, sand dome and other projections normally on top of the locomotive, giving the engineer a view unobstructed by trailing steam and smoke" (Tr. 2210).

The clam-shell deflector cannot be used on the A. C. type of engines, which are equipped with "splitters" or skyline casings, nor on the "P", Mountain or G. S. types, where skyline casings are used, because the effect of the structure would be destroyed (Tr. 2210). Exhibit 50 shows 145 engines of the A. C., P. M. T. and G. S. type equipped with smoke lifters or skyline. Many of these engines have been equipped with such devices since January 19, 1942, the time when the Organization served its notice for the requested rule (Ex. 50). The Company has been in the process of equipping all its engines used in road service with deflectors or smoke-lifting devices over a period of years and claims that it is continuing with this program as fast as the acquisition of materials will permit. Ninety-nine (99) engines are equipped with clam-shell type of deflectors (Ex. 46), thirty-one (31) with elbow types (Ex. 44), fifty-three (53) with "splitters" (Ex. 48). It is claimed that, together with the A. C. type of locomotives, the ninety-nine (99) engines equipped with the clam-shell type are sufficient to meet requirements of tunnel and grade territory on the Company's main line (Tr. 2208):

> In tunnel districts on branch lines, and occasionally on main lines, other smaller engines such as the consolidated type are used; many of these are equipped with deflectors, and the engines so equipped are generally assigned to and used in tunnel territory as far as possible (Tr. 2208-2209).

But all engines which are capable of taking smoke-stack deflectors (clam-shell type) are not so equipped (Tr. 2470).

To sum up in the matter of deflectors: Of the total of sixteen hundred thirty-one (1,631) locomotives in the service of the Company, twelve hundred fifty-five (1,255) of which are in road service and three hundred seventy-six (376) in yard service, three hundred twenty-eight (328) are equipped with either smoke-stack deflectors or smoke and steam lifters (Tr. 6078). Most of the types used in grade and tunnel territory are equipped with one or the other type or the "splitter" type. As far as deflectors can carry the smoke and steam away from the cab of the engine emitting them, these deflectors work satisfactorily, but do not solve the problem for the back engines following in long tunnels as far as heat and gas are concerned. The Company has embarked on a program to fit all its engines with skyline casings, or stack deflectors, as fast as it can obtain the materials. It is not feasible to put stack deflectors on engines equipped with smoke and steam lifting equipment for one destroys the action of the other. There are engines still used in tunnel territory without deflectors owing to war conditions, but it is the intention of the Company to continue with its program as rapidly as conditions permit. The rule as drawn would require all engines to be equipped with smoke-stack deflectors which is, for reasons pointed out above, not feasible. The Organization concedes that the A. C. type of engine should not be so equipped and in effect withdraws that type from the rather rigid language of its request.

We think that the Company should be given a fair opportunity to complete its program without requiring it to do by rule even that part of the request which is mechanically feasible. It is to be expected that the Company will, as far as possible, use its presently-equipped smoke-deflector locomotives in tunnel territory, and that hereafter it will be an exceptional case, if any, in which engines without such equipment will be there used.

RESPIRATORS

As before said, we do not think the matter of smoke, gas and steam in long tunnels is trivial. Witnesses for the Organization, engineers who had or were running tunnel territory, testified as to intense heat which accumulated when in the tunnel for rather short periods and of the abrupt change from high temperatures to wintery blasts during certain times of the year, when the engine emerged from the tunnel. The men become thoroughly perspired and then meet drafts through the cab or because compelled to lean from the cab window and face the wind. Such conditions may be incident to the work and incapable of complete elimination, but they should be reduced as much as possible.

We have concluded that operating necessities do not permit of limiting tonnage and that the program of the Company to equip all locomotives used in tunnel territory with the type of smoke deflector best adapted to the engine and the conditions to be met should be given a fair trial. But at best the back engines, even though spaced for best results, will get the effect of the steam, smoke and gas coming from those engines in front of them. Therefore, respirators are the key to the situation. A respirator which can be easily held, which filters out the oil and smoke and particles of dirt, and which may at the same time have a cooling effect on the face where the steam touches the bare skin is the most suitable.

The Company states that it has experimented with respirators over the years. The present conical type of respirator was developed and thought to be the most satisfactory. This respirator is attached to a pipe coming from the air compression tank. A valve on the pipe to be regulated by the user of the respirator regulates the amount and pressure of the oxygen intake. There is in the cone that fits over the face when held there by the hand a wire screen with a hinge. By lifting this circular screen, a sponge cut to fit may be introduced into the cone and held in place by closing the screen lid. The men complain that after a very short time the air from the tank becomes foul and sour. The air from the compression tank comes from the tunnel and hence oil fumes and steam are sucked in, which heat it and contaminate it. This dirty air is then breathed through the tube into the respirator.

The Company states that it has developed a filter which is fitted into the compression tank. The filter substance used is activated charcoal broken into particles of a size which go through an 8 mesh and pass over a 14 mesh screen. This charcoal should be changed at frequent intervals. It is claimed that this was found to be quite satisfactory.

> In 1944 extensive tests were made with a respirator connection attached to a separate air reservoir on a locomotive to determine whether cool air with full oxygen content could be secured. These tests revealed this arrangement was not satisfactory (Tr. 2054).

We infer from the testimony of witnesses for the Organization that while the cone-shape type respirator is not perfect, if the air coming through it is not charged with oil fumes and smoke, and does not get too hot, it would fairly well serve its purpose.

The Organization exhibited a respirator containing old waste and no sponge; the Company one with a new sponge. Complaint is made that respirators are not furnished, or, if furnished, are not satisfactorily serviced. The Company on the other hand testified that respirators are furnished for each engine, but that many engineers prefer to have their own and bring and take it with them; that sponges have been difficult at times to get, but that a sufficient supply has always been available; that sometimes respirators were found tossed in the sand box.

We think that the Company should continue its experiment to develop the most technically perfect and suitable respirator for use under normal conditions. We do not believe that it need be made the subject of a rule. The Company states that it welcomes suggestions from the engineers; in fact, has manufactured a different type of respirator used on the Portland division which was the invention of one of the engineers.

Perhaps one of the reasons why the men complain is because they have not been currently apprised of what tests and experiments the Company is making and the results obtained therefrom.

The Company might well consider asking the four Brotherhoods who represent road operating employees to form a committee to meet with representatives of the Company on a consultation basis, the Company to disclose what is in progress and the Committee to be the medium for carrying these reports back to their constituencies, and to bring to the Company suggestions of the men.

The statement of the Company that "the manner of accomplishment (practical steps to alleviate smoke, gas and heat in tunnels) is strictly a managerial function and responsibility . . ." (Tr. 2065) smacks too much of absolutism, for it is the men who suffer the physical discomforts from these tunnel conditions.

Spacing:

Proper spacing of engines throughout the train alleviates the smoke nuisance. The Carrier claims that it spaces the helpers at least fifteen (15) cars apart, except where explosives in a car prevent such spacing. On the San Joaquin Division the Santa Fe spaces its engines sixteen (16) cars apart, but the distance between watering tanks and the longer engines used on the instant road require less train movement in taking water than if spaced sixteen (16) cars apart. We think a fifteen-car spacing should be sufficient.

RECOMMENDATION:

The Board recommends that the proposed rule contained in the notice served on the Carrier January 19, 1942 and set out in Item 1 of Case A-1370 be not adopted.

CASE A–1370—ITEM 2

I

ORGANIZATION'S REQUEST

The Organization's formal notice submitted to the Carrier on July 10, 1942 contained the following request:

> Request that Port Costa be reestablished as the on and off duty point, or that the Company furnish free transportation for the engineers to and from Port Costa. (Ex. "B", 3.)

Involved in the instant case is Article 11, Section 1 (1), (m), and (n) of the Engineers' Agreement which reads as follows:

> (1): A designated point will be established for engineers coming on and going off duty, and before such points are changed forty-eight hours' advance notice will be given. Extra engineers will be notified when called the point at which required to report for duty.
>
> (m): The point for going on and off duty will be governed by local conditions. In certain localities instructions will provide that engineers will report at the hump, others report at yard office, others at engine houses or ready

tracks. It is not considered that the place to report will be confined to any definite number of feet, but the designation will indicate a definite and recognized location.

(n): The foregoing paragraphs will also apply to engineers called or used in extra yard service. (Ex. "A", 37.)

II

HISTORY OF THE DISPUTE

The Superintendent of the Carrier's Western Divison on May 8, 1942 changed the on and off duty point for three Port Costa yard assignments (Nos. 809, 812 and 821) from the designated point, Port Costa, to what is known as L. C. L. Station, one mile east of Martinez and 4.6 miles east of the former location. On July 10, 1942 the General Chairman notified the Superintendent of the Western District of the dissatisfaction of the men with this action, and formally presented the request that Port Costa be reestablished as the on and off duty point, or, alternately, that the Company furnish free transportation for the engineers to and from Port Costa (Ex. "K," 1).

From this point the case progressed through negotiations, and mediation without success and reached this Emergency Board on Monday, April 30, 1945.

III

DESCRIPTION OF PORT COSTA YARD

Port Costa is a station on the Carrier's double track main line which extends from Oakland along the south shore of San Francisco and San Pablo Bays to Carquinez Straits and to the City of Martinez. At Port Costa are a roundhouse and other facilities for servicing locomotives. Switch engine assignments work out of there to service neigboring industries. Crockett, an important industrial community, is 2.1 miles west of Port Costa (Tr. 1660-1661).

The yard switching limits of Port Costa, Western Division, extend from MP 27.97 eastward to MP 39.24, and are on the Carrier's main track between Oakland Pier and Sacramento. The station of Port Costa is located at MP 3.1. Included within the Port Costa switching limits is the station of Martinez, 3.6 miles east of Port Costa, and an on and off duty point for engineers in yard switching service located at L. C. L. station approximately 4,500 feet east of Martinez station. The L. C. L. station serves principally the Shell Oil Company plant at Martinez. The yard limit board east of Martinez station is nearly 2 miles from that point (Tr. 1661).

IV

THE ISSUE

The issue in the present case sufficiently appears from the statement of the request above and denial of such request by the Carrier. A preliminary inquiry presents itself as to whether the engineers in the instant request seek a change in the application and interpretation of a current rule or merely a local exception to a working rule.

V

POSITION OF THE PARTIES

1. *Employees' Position:*

The Organization contends that in changing the point of on and off duty from Port Costa to the L. C. L. station, the Carrier thereby caused the engineers to change their place of residence at Port Costa and move to Martinez; that the engineers are also required to walk from Martinez to L. C. L. station, which is stated to be approximately one mile east of Martinez station (Ex. "K", 1). Note: The actual distance is 4,500 feet east of Martinez station (Tr. 1631).

Moreover, it is claimed that great additional inconvenience has been caused engineers because of their inability to find sleeping accomodations at Martinez, which is attributable to the population congestion in that community growing out of war industry manpower needs; that rooms are unavailable at any price; that consequently, the engineers have found it necessary to use the station waiting room for sleeping purposes; that some drive to and from their homes in their own cars, which even on a share-the-car basis is said to be an unnecessary waste of gasoline (Ex. "K", 1).

The Organization insists that it is impossible for engineers to do efficient work under these conditions (Ex. "K", 2). One witness testified that previously to change in the on and off duty point it was customary to drag empty cars from Port Costa to the L. C. L. station and have loads back at night from the Shell Oil Company to Post Costa, so that the time going and coming between the two points was not wasted (Tr. 1585).

It is further maintained that the Carrier has acted in an arbitrary manner and with no regard for the interests of its employees, because it made the change without conference and agreement with the Committee. The Organization contends that both the Engineers' Agreement and the Railway Labor Act dictate conference procedure whenever working conditions are changed, as in the current instance (Ex. "K", 3).

2. *Company's Position:*

The Carrier contends that in changing the on and off duty point from Port Costa to the L. C. L. station it has acted in accordance with all pertinent agreements and laws, specifically the agreement covering engineers, Article 11, Section 1, (1), (m) and (n); and the Railway Labor Act; that the provisions of paragraph (1) have been continuously in effect on the Carrier's lines since October 1, 1918, and those of paragraphs (m) and (n) since January 1, 1919; that similar provisions are applicable on the lines of every other Carrier in the country (Tr. 1632-1638).

The Carrier declares that the present request is designed to modify the effect of a proper application of current rules; that any dispute involving the interpretation and application of such rules is properly referable to the appropriate divisions of the National Railroad Adjustment Board and not to either the National Mediation Board or this Emergency Board; that the Company has not received from the Organization any request for a change in current rules under the procedure set forth in Section 6 of the Railway Labor Act and in Article 36 of the current agreement covering engineers (Tr. 1638-1639).

In reference to the phrase "local conditions" contained in paragraph (m) of Section 1, Article 11, of the agreement covering engineers, the Carrier contends that this phrase, contrary to the Organization's interpretation, has to do with those operating conditions within the switching limits which surround the service to be performed by the particular engine; that the phrase has no reference whatsoever to matters or conditions extraneous to the conditions which dictate how service shall be performed within the limits of the switching territory; and that consequently, such matters as housing and rooming accommodations and driving distances to and from home and the point of on and off duty do not come within the purview of this provision (Tr. 1639-1642).

Because of greatly increased traffic in recent years it has been imperative, the Carrier states, to require the entire time of the yard engine throughout the twenty-four (24) hours and in addition to provide the service of another engine occasionally in order to care for the needs of the Shell Oil Refinery at Martinez; that the moving of a switch engine from Port Costa over main line tracks for nearly four (4) miles to the Refinery at the beginning of each shift and return same at end of the shift would be wasteful of time and inconvenient; that for those reasons the on and off duty point was moved to L. C. L. station (Tr. 1662-1663).

The Carrier asserts that the engineers' proposal, if accepted, would not only involve the abandonment of a practice conforming to the existing rule, but would result in loss of logical, efficient and advantageous methods of operation. It is affirmed that the establishment of the L. C. L. station as the new on and off duty point has resulted in a saving of four (4) to six (6) hours of switch engine time every day because it enables the men to assume duty and be relieved at a point more convenient to themselves and more beneficial to the Company, and thus makes possible essential, indispensable service for an important industry at a minimum loss of time and effort (Tr. 1664-1667).

The Carrier also points out that the engineers involved in the instant dispute could hold other assignments if dissatisfied with the present one because they have sufficient seniority to bid for assignments in switch engine service at Port Costa, going on and off duty at the Port Costa roundhouse; or for assignments in the West Oakland yard. As a matter of fact, says the Carrier, Martinez is a more convenient and accessible point than is Port Costa, whether one travels by bus or private automobile; that rail transportation facilities are abundant for all who wish to travel that way (Tr. 1667-1668).

Finally, the Company insists that a minimum of fifteen (15) men are involved in the operations covered in the instant discussion; that is, the engineer, the fireman, the foreman, and at least two helpers on each crew, and that the residential abodes of these crew members indicates that the restoration of Port Costa as the on and off duty point would be less convenient for most of the men than is retention of the existing on and off duty point at L. C. L. station (Tr. 1672-1673).

VI

DISCUSSION AND RECOMMENDATION

This request calls for a rule which would in effect be a particularized exception to the general rule which provides that "a designated point will be established for engineers coming on and going off duty . . . " The Organization contends that it was intended that before any change was made, the Organization should be consulted. We find no such requirement in Section (1), Sub-sections (l), (m) and (n) of Article 11. A change in the designation of the going on and off duty point is not a change in the rules such as the Carrier cannot make without notice and conference. The rule itself provides for a change on forty-eight (48) hours' notice. Such right to change is, by the rule itself, reserved to the Carrier. The instant request is one to except from the rule which gives the Carrier the right to make the change, the particular point of Port Costa and freeze that as the going on and off duty point in this one case. If that may be done in this one case, we see no reason why the Organization may not by a series of requests, if granted, create a series of special exceptions to the rule, and thus largely detract from the right of the Carrier to determine what "local conditions" should govern in the bringing about of most efficient and economic switching operations.

The situation under consideration itself presents an excellent example of "local conditions". The Shell Oil Company has a large refinery near the L. C. L. station. In the judgment of Management it conduced to the most efficient serving of that refinery to put three switchings crews around the clock starting from the L. C. L. station. The "local condition" of the requirement of that service dictated the advisability of the L. C. L. station as the going on and off duty point. We do not think the Carrier was required to take into consideration the personal convenience of each man in the crew, where he lived, method of getting to the point of going on duty or even gasoline consumed in getting there. The so-called waste of gasoline may well be compensated for by the more rapid and efficient handling of valuable war-needed products. But as we shall see in a moment, Port Costa as a more convenient point of going on and off duty is largely illusory. We do not mean by what has been said above that we do not think it well for the Carrier to consult with its men before it changes the point for going on and off duty, and that as far as possible it should, other things being equal, take into consideration the convenience of its employees and hardships which might attend them by a change, but the rule does not compel it. Only local conditions as they affect service and efficient operation are the paramount considerations which need control the going on and off duty point. The rule so provides.

We are of the opinion that unless it is shown that the Carrier has been arbitrary in that it has left matters other than local conditions control, or that the hardship to the men which will ensue from a change in the going on and off duty point is great as compared to the benefit accruing to the Carrier by such change, no particularized exception to the Rule should be made. If any special rule which would in effect work an exception to Article 11, Section 1, (l), (m) and (n) is recommended, it should be in rare instances and then only if the hardships to the men affected by such change are great.

In the instant case we find that at the present time the men involved in this change, fifteen (15) in number, including engineers, firemen and yardmen, all reside at places where it is just as easy or easier to go between the L. C. L. station and their homes as between Port Costa and their homes. Of the fifteen (15) employees which would be affected i. e., three engineers, three firemen, three foremen and six helpers; three live in Oakland, one at Suisun, three at Walnut Creek, one at Antioch, seven at Martinez. All three engineers included in these fifteen (15) employees, therefore, live at places where their reporting at the L. C. L. station would admittedly be no more onerous than reporting at Port Costa. But it is contended that the situation might change at any time and an extra engineer to run out the seven-day advertising period or to fill a vacancy would find himself confronted with difficulties in obtaining lodging. But the worst that could happen to him would be that he would have to get to and from Port Costa to the L. C. L. station, a distance of about 4.6 miles, for a limited period of time. With the facilities for riding caboose or passenger trains this should not amount to a great hardship. Certainly to compel the Carrier to multiply its train movements on an already heavily used main line (there are 90 to 95 main line movements between Port Costa and Martinez during any 24-hour period) to run these men back and forth between Port Costa and Martinez would tend to impede traffic, and we do not think the situation serious enough to compel the Carrier to afford other types of transportation back and forth between these two points.

There may be many places on this system where men required to report at an inconvenient point for going on and off duty might equally, or with greater force, make a case for transportation. We might expect that, without a new specialized rule in this case making an exception to Article 11, Section 1, (l), (m) and (n), the Carrier, when the situation again arises where men assigned to this service, or temporarily filling a vacancy from the extra list, are called find it necessary to go from Post Costa to the L. C. L. station, or vice versa, will cooperate in the matter of transportation as far as it can without disrupting its main operations. Much may be done by friendly cooperation in that regard between the Carrier and the Local Chairman.

RECOMMENDATION:

The Board recommends that the request contained in Item 2 of Case A-1370 be not adopted.

CASE A–1371

HISTORY OF THE DISPUTE

Case A-1371 consists of some twenty different requests or proposals. Items 1-14, inclusive, were presented to the Company by the Engineers' Organization on November 24, 1941; Item 15 was submitted September 15, 1942, and Items 16-20, inclusive, were presented December 4, 1942.

The Company denied each and all of the requests and proposals. Subsequently the Brotherhood invoked the services of the National Mediation Board, which made numerous attempts to mediate the disputes. Failure of mediatory efforts in each instance caused the Board to suggest arbitration which in most instances was rejected by the Company, and in other cases agreed to by the Company on conditions which the Organization refused. Termination of the Board's services under Railway Labor Act resulted in submission of the controversies to the present Emergency Board, which heard the parties at San Francisco, beginning May 16, 1945.

Regarding Items 12, 13, 17 and 18, it should be noted that the Brotherhood of Locomotive Firemen and Enginemen, through special counsel and official representatives, sought to intervene in behalf of its members. Denied the right of intervention as a party, the Firemen's Organization was admitted as a friend of the Board and was permitted to present testimony and evidence, and to cross-examine witnesses; said Organization also submitted a summation brief titled: "Memorandum of Brotherhood of Firemen and Enginemen with Respect to Case No. A-1371, Items 12, 13, 17 and 18."

Because the Brotherhood of Locomotive Engineers objected to any participation by the B. L. F. E. in these disputes, the Engineers' counsel and official representatives withdrew from the courtroom during the Firemen's presentation. The Emergency Board exercised special care to respect the Engineers' point of view and attitude in the matter and volunteered to adopt and to ask any questions indicated in order to protect the Engineers' Organization from compromising its position in relation to the Firemen's participation, but the B. L. E. counsel and representatives preferred not to remain in the courtroom or to recognize in any manner these proceedings while the Firemen's Organization was participating.

CASE A-1371—ITEM 1

I

ORGANIZATION'S REQUEST

The instant request reads:

> An engineer will be employed on all engines that are run or hauled over the road under steam except where main rods are taken down. (Ex. "B", 3.)

II

THE ISSUE

The issue in this case is whether work hitherto performed by other classes of employees shall be restricted to engineers, or, alternatively, whether engineers shall be added to the personnel used on all engines run or hauled over the road under steam except when main rods are taken down. In other words, the question primarily at issue here is whether the duties currently performed by members of other crafts and classes of employees, such as firemen and hostlers, shall be transferred to members of the craft of locomotive engineers.

III

POSITION OF THE PARTIES

1. Organization's Contentions:

The principal argument of the Organization is that the work connected with a locomotive having steam in the boiler properly belongs to locomotive engineers. The Organization asserts that the duties of an engineer include not only the operation of the engine from the cab, but also the care, oiling and lubrication of it, all of which should be performed exclusively by an engineer. It is contended that the proposed rule is necessary to prevent the Carrier from operating locomotives under steam or with main rods up without the employment of a locomotive engineer, as is this Carrier's alleged improper practice. The request does not initiate a new type of practice, the Organization insists, since other railroads, for example, the Chicago and North Western Railway and the Missouri Pacific Railroad, have such a provision in their agreements covering engineers (Ex. "R"; Tr. 3584-3585).

The First Division of the National Railway Adjustment Board in Award 5764 sustained a claim under the application of said rule on the C. & N. W., thus recognizing the validity of the provision, the Organization contends (Tr. 3587-3588). Furthermore, the Organization insists, the Carrier has used engineers under the circumstances stated in the request; hence, there is nothing drastically new in the proposal (Tr. 3590).

Finally, the Organization argues, in the interest of safety an engineer should be employed to perform the operations under discussion here (Tr. 3619-3620).

2. Carrier's Contentions:

Chief among the Company's arguments against the Brotherhood's proposal is that it would infringe upon duties customarily assigned to the members of crafts or classes of employees other than engineers, or, alternatively, would require the Carrier to use an additional and unnecessary employee; that under its traditional practice, the "messengering" of engines hauled in trains, even when under steam, has been allocated to employees of other crafts and classes, where these engines are not exerting any tractive force, even for their own propulsion (Tr. 3626); that adoption of the Organization's instant request would result in jurisdictional conflict. Indeed, the B. L. F. & E. has already protested vigorously the adoption of said proposal (Tr. 3625; Ex. 78).

In reality, the Carrier urges, the proposed rule is superfluous, because when an engine is operated in a train under steam, and actually exerts propulsive force, or is run without cars, it is the practice of the Company to employ an engineer to perform the duties incidental thereto; that in circumstances other than these, an engineer is not necessary nor is one used (Tr. 3627); that a fireman, a hostler and certain shop craftsmen can competently and safely "messenger" an engine; that engineers have not rendered such service and need not do so now, because a messenger acts merely as a caretaker of the locomotive while it is being hauled over the road, (Tr. 3627-3661).

It must not be forgotten, the Carrier urges, that its present practice of handling locomotives over the road under steam is in compliance with the provisions of the California Full Crew Law and the corresponding laws of other states under which this Company operates; that while such laws require one fireman and one engineer for each steam locomotive where train is propelled or drawn by steam, they impose no such requirement under the circumstances contained in the instant proposal (Tr. 3657-3659; Exs. 79,80,81,82,83).

In this regard it is necessary to remember, the Carrier states, that locomotives are "under steam" when working boiler pressure and fire to maintain steam pressure are sufficient to make possible self-propulsion; that contrary to the opinion of the Organization, a locomotive with steam in the boiler or fire in the fire box insufficient to permit self-propulsion is not "under steam" but is considered dead (Tr. 3659-3660).

IV

Discussion and Recommendation

The Organization frankly stated that it made the request in order to compel the Carrier to employ engineers to "messenger" an engine over the road. Engines are run over the road "under steam" when exerting tractive force or when placed in a train for the purpose of exerting tractive force. We understand the term "under steam" as used in the proposed rule to mean what is generally meant in the railroad world, i. e., an engine with such steam pressure in the boiler as would enable it to propel itself at ordinary train speeds, sometimes called "working boiler pressure". It is with comparative infrequency that engines are hauled over the road under steam. In the case of oil fuel the fire may be extinguished by simply turning off a valve on the feed line so that it would be unnecessary to haul an engine with workable steam pressure over the road. Since engines in service on the road have an engineer and firemen there is no necessity for this rule as to those engines.

We do not agree that the hauling of an engine over the road when not under steam requires an engineer to look after it. Engines have been "messengered" over the road by firemen and hostlers and even roundhouse men. It is the engineer's job to operate an engine. If an engine is merely hauled, a mechanic with knowledge of its parts and what to do in emergencies is capable of caring for it, including any lubrication which may be needed. Since many of the engines are automatically lubricated even this is not required. As before said, if the engine is actually in service it will have an engineer and its main rods would not be down; if it is not in service, but is simply being hauled, it would not likely be under steam as above defined.

We see no occasion for the proposed rule. If its purpose or result would be to give engineers a monopoly on work hitherto done by men of other crafts we see definite objections to it.

RECOMMENDATION:

The Board recommends that the proposed rule contained in Item 1 of Case A-1371 be not adopted.

CASE A-1371—ITEM 2

I

Organization's Request

The instant request reads:

> When engineers are given lunch period under Article 11, Section 1 (e), it will be at a point in the yard where they will have access to a nearby lunchroom in order that they may secure a hot meal within the allotted twenty minutes. (Ex. "B", 4.)

Article 11, Section 1 (e), to which reference is made in the present proposal reads:

Engineers will be allowed twenty minutes for lunch between four and a half and six hours after starting work, without reduction in pay.

Yard engineers will not be required to work longer than six hours without being allowed twenty minutes for lunch, with no deduction in pay or time therefor.

Note: Engineer is not relieved of care of engine during lunch period. (Ex. "A", 36, *Decision,* (e) and Note.)

II

THE ISSUE

The question at issue in this case is whether an additional paragraph shall be incorporated into Article 11, Section 1 (e), of the Engineers' Agreement, which shall designate the point where the currently provided twenty-minute lunch period is to begin. In other words, whether engineers who are given a lunch period under the provisions of said Article 11, Section 1 (e) shall be given that privilege at a point accessible to an eating establishment where they may obtain a hot meal within the allotted twenty minutes (Tr. 3674-3675).

III

POSITION OF THE PARTIES

1. *Organization's Contentions:*

The Organization contends that the proposed addition to the existing rule (Article 11, Section 1 (e) is necessary in order to preclude the imposition of penalties upon engineers who may deem it essential to have a hot lunch and who may move their engines to a point where such a lunch is obtainable; that it has been a common practice in the yards of this Carrier to permit engineers entitled to lunch periods to move the engine and yard crew to a nearby lunch room where a hot meal may be secured; that in some yards, however, Article 11, Section 1 (e) is interpreted to mean that the engineers are required to take their lunch period when notified, regardless of whether the engineer involved has convenient access to an establishment providing a hot lunch (Tr. 3676); that an example of the results of failure to comply is set forth in Organization's Exhibit "S" detailing the case of Engineer D. B. Jolliff, San Joaquin District, assessed sixty demerits because after yard foreman notified him to go to lunch he moved his engine from point of switching to nearest available lunch room where a hot lunch could be secured in the allotted period (Tr. 3676-3677; Ex. "S").

The Organization contends also that the conditions encompassed within the instant proposal are essential to the health and efficiency of engineers; that in many cases men in yard service work from twelve to fourteen hours, consequently proper food at the proper time is necessary to safeguard health and efficiency (Tr. 3682-3683).

The instant request is a reasonable one, the Organization asserts, because the Company has, and often assumes, the legitimate obligation of providing eating facilities and opportunities for its employees; that not only do many engineers not carry lunches, but the rules of the Company do not require them to do so (Tr. 3714-3717, 3726).

2. *Company's Contentions:*

The Company maintains that the instant request is to be so impractical as to be unworthy of extended consideration; that no railroad company can control the location of lunch rooms and other eating facilities which may or may not be adjacent to yards or terminals; that it would be completely inconsistent with efficient operation of yard engines if, as under the instant proposal, such engines had to be operated to a point where hot lunches are available (Tr. 3901-3902).

The Company contends that the net result of acceptance of the instant proposal would be a serious impairment to and interference with the essential services involved, with consequent inconvenience and expense to the shipping and traveling public; that there would result delays in the performance and completion of industrial spotting and switching, thus interfering with the orderly operation of industries and plants dependent upon switching and causing unnecessary expense; that the break-up and make-up of trains in train and classification yards would be delayed; that there would be unnecessary interference with main-lead and main-line traffic because of the movement of yard engines (Tr. 3987-3988).

The Carrier further contends that waste and inefficiency would result from application of the instant proposal because of the inevitable loss of time of engines and crews; that the estimated cost of these losses is in excess of $1,500,000 per annum (Tr. 3988-3989).

It is essential to remember, the Carrier insists, that the present rule is a standard rule of national application, under the terms of which engineers and other employees in yard service generally work a continuous eight-hour shift, but are allowed not more than twenty minutes to eat, after the end of four and a half hours, but not later than six hours from shift-starting time, there being no deduction in pay for this meal period; that the present rule dates from the national establishment of the continuous eight-hour day, the previous rule having provided for a meal period of one hour without pay (Tr. 3902-3908; 3986); that the instant request is completely novel (Tr. 3912).

The Carrier asserts that not only is the instant proposal wasteful and impractical but totally unnecessary because a large percentage of engineers in yard service carry their own lunches, especially those engineers whose particular assignments cause them to go to points in their terminals where eating facilities are not readily accessible; that the carrying of lunches by employees involves no hardship, difficulty, or hazard, and is a practice common to many important industries; that the Company does not require engineers to carry lunches, nor prohibit or discourage them from obtaining meals at restaurants or lunch rooms, provided this is done within the allotted time of twenty minutes (Tr. 3986-3987).

IV

DISCUSSION AND RECOMMENDATION

It is recognized that a hot lunch for workmen is desirable. In industries where there are sufficient employees all confined within a comparative limited space, restaurant facilities may be provided, but in the railroad industry the workmen engaged in the operating end are transitory. This is especially so on the road. But even in yards of any size it would not be feasible to place restaurants at different places in the yard where they would be readily accessible to men stopping work at different points of the yard. The patronage might not even warrant it. It would be equally impracticable to require the Carrier to so arrange yard work in all cases in order to provide stops for the yard crews just when they were within easy reach of restaurants, granted there were restaurants available or reasonably accessible. And in some yards such would not be the case. The next alternative would be to permit the enginemen to run the engine from the point of work stoppage to the nearest restaurant. This in many cases would be at a considerable distance and would take considerably more than twenty minutes. Also it would require the switching crews, and indeed those firemen who carried their lunches or did not desire to accompany the engineer to remain idle until the engineer returned to work. It would in such cases result in giving the crews and enginemen considerably more than the authorized twenty minutes for lunch. The delay in handling traffic might, indeed would, over the whole system be very substantial. The loss in economy and efficiency would be out of all proportion to the benefits derived by the men denied the opportunity to eat at a restaurant. In these days of thermos bottles and handy devices for carrying lunches it would seem that the employees of the railroad could do what is done in thousands of cases in other industries, viz., carry a lunch with at least a hot drink, even though a locomotive cab is not by choice a place to keep a lunch.

The Board is of the opinion that all it can do in this matter is to suggest to the Carrier that it try to accommodate its work in each yard, so far as is consistent with economy and efficiency of operation, so as to permit, where restaurant facilities are reasonably available, the men to patronize within the allotted twenty minutes the available restaurants. This, the Carrier claims, it already does.

RECOMMENDATION:

The Board recommends that the proposed addition to Article 11 contained in the request embodied in Item 2 of Case A-1371 be not adopted.

CASE A-1371—ITEM 3

I

ORGANIZATION'S REQUEST

The instant proposal reads:

> The Chairman of the General Committee of Adjustment of Brotherhood of Locomotive Engineers shall be furnished with a copy of all decisions, rulings and questions relating to Engineers' Agreement. (Ex. "B", 4.)

The request is related to the existing rule of the Agreement covering engineers found in Article 35 which reads:

> INTERPRETATION: In case of disagreement as to interpretation on Articles in this schedule, the Local Committee, Brotherhood of Locomotive Engineers, will take up same with division officers and all evidence will be submitted to General Manager, or his authorized representative, for decision, copy of decision to be furnished General Chairman of Engineers' Committee. (Ex. "A", 112; Ex. "B", 4.)

II

THE ISSUE

The issue in the proposal is whether the existing rule (Article 35 of Engineers' Agreement) shall be so expanded as to furnish designated officers of the Brotherhood of Locomotive Engineers not only copies of decisions rendered by the Carrier's General Manager, or his authorized representative, in disputed interpretation of Articles in the Engineers' Agreement, but also copies of all memoranda and correspondence involving application of said Agreement, or if interpreted more narrowly shall there be included in Carrier's inter-office correspondence containing a conclusion as to an intrpretation of the rules given in an advisory or declaratory capacity when no claim or dispute was involved, (Tr. 3734, 3749, 3755).

III

POSITION OF THE PARTIES

1. *Organization's Contentions:*

The Organization contends that the more inclusive provisions of the proposal are necessary in order to avoid the actual nullification of Article 35 through arbitrary interpretations which deprive the General Committee of Adjustment of essential information involving the Engineers' Schedule. Illustrative of its immediate contention, the Brotherhood states, was the failure of the Company to send the General Chairman a copy of decisions involving a deadhead mileage claim by Engineer J. H. Diehl, Mojave to Bakersfield, March 24, 1940, and a similar claim of Engineer H. H. Beck, Bakersfield to Mojave, same date (Tr. 3736-3737; Ex. "T", 17); that the Carrier took the position that unless the Local Chairman asks that there be sent to the General Chairman a copy of the Company's specific rulings under Article 35, it is not necessary to furnish the General Chairman with said copy (Tr. 3737); and that said interpretation of the existing rule is arbitrary and definitely contrary to prior practice (Tr. 3737, Ex. "T", 2-16).

It is advanced that the proposal is not a new departure, as may be seen from examination of Exhibit "T", which reproduces a similarly comprehensive rule currently in force in agreements covering engineers on the Chicago & Northwestern Railway Company and the Missouri Pacific Railroad Company (Ex. "T", 1; Tr. 3735).

Finally, the Organization contends, the information requested in the instant proposal is indispensable to prompt and expeditious adjustment of claims and disagreements according to the requirements of the Railway Labor Act. In no other way, it alleges, can claims and disputes be handled intelligently and effectively, which is a primary aim of said Act (Tr. 3896-3897).

2. *Carrier's Contentions:*

The Carrier contends that the language of the request is so ambiguous and its purposes so comprehensive as to require that there be furnished the Organization's General Chairman not only copies of all rulings and questions of the Personnel Department relative to the agreement covering engineers, but conceivably also copies of decisions or rulings made by a division superintendent or his subordinates; that simple inter-office memoranda touching personnel relations under said Agreement would, according to the proposed rule, have to be furnished the General Chairman (Tr. 3805, 3883-3884); and that the inclusiveness of the instant request, the Carrier asserts, would make it mandatory for the Company to furnish the Organization copies of detailed communications to which it is not reasonably entitled (Tr. 3806-3884).

Moreover, the Carrier insists, the request is unnecessary if it seeks merely copies of ruling and decisions and omits questions raised by Company officials regarding problems arising under the Schedule, because it is the established practice of the Company to furnish the Engineers' Committee all required and essential information according to Article 35; that whenever there is a dispute involving interpretation of the Engineers' Agreement, provided it arises under Article 35 by virtue of a disagreement between the local committee and the division superintendent, and is referred to the General Office for decision, the General Chairman is sent a copy of said decision (Tr. 3885).

The Carrier further contends that if the Organization must be furnished with copies of all the correspondence involving its understanding, interpretation, and contemplated changes of the Engineers' Agreement, then it is only fair and reasonable that the Company be furnished copies of all correspondence passing between the Local Chairman and the General Chairman, and between the General Chairman and the Grand Office at Cleveland, involving interpretation and application of the Engineers' Agreement (Tr. 3805, 3890).

Acceptance of the request would, the Carrier affirms, merely establish an additional field for the development of needless disputation and strife without any constructive result (Tr. 3807).

The Carrier specifically directs attention to the adequacy of the existing rules, namely, Article 25, Section 3, and Article 35, because in cases of specific claims, these rules amply provide for statements of facts and reasons why claims are not allowed; joint conferences of official representatives of the parties in cases of disagreement; a joint statement of facts by superintendents and local chairmen, whenever necessary. The Carrier contends that the adequacy of existing rules is greatly strengthened by the fact they are concerned with specific evidence and contemplate actual controversies over concrete situations, rather than fruitless discussions of abstract disputes (Tr. 3887-3888); that in such cases of actual controversies and real claims, the Company will gladly continue, as it has in the past, to furnish essential data, as well as the required decisions, to the Organization (Tr. 3891).

IV

DISCUSSION AND RECOMMENDATION

The proposed rule is all inclusive. It would by its wording require not only all decisions of the General Manager through his representative to be furnished to the General Chairman, but all decisions of a Superintendent which were furnished to the Local Chairman. It would require all decisions and rulings relating to the Engineers' Agreement whether they pertained to a disagreement as to interpretation, or interpretation regardless of disagreement, or whether or not interpretation or application was involved. It would require the Carrier to furnish a copy of a decision or ruling on a question submitted by an operating official for an advisory ruling so as to determine whether he could do something under the rules when no claim or disagreemnt had come into being. And it would even require that such question in regard to which an advisory or declaratory opinion had been asked be furnished to the General Chairman. And if the question was attended with a statement of circumstances to illuminate it, such statement might include a contemplated future policy or change in operative procedure. It might thus put the Brotherhood in advanced possession of information involving a change of operating policy or procedure. It might in fact result in putting the Brotherhood in possession of a considerable amount of inter-office communication which was not of its concern. We do not think such was the intent of the proposal. In fact, the General Chairman on the stand disavowed any such purpose, but rules have a habit of becoming expanded in meaning as the years roll by. Time substitutes new representatives in place of those who fashion existing agreements who between themselves knew what they intended.

We think the proposed rule is ambiguous and much too broad and therefore, we cannot recommend its adoption.

In the development of the evidence in this case it appeared that there were cases in which claims had been filed which involved matters of interpretation or application of the rules where the Superintendent of a Division had requested the Personnel Department for its advice before acting on the claim. It had been the practice of the Personnel Department to furnish the General Chairman with a copy of the opinion sent to the Division Superintendent. The Carrier's position is that such was done by courtesy merely because the duty to furnish a copy of the decision of the General Manager, or his authorized representative, to the General Chairman arises under Article 35 only in case of an appeal from a disagreement below. Where the Superintendent has not denied a claim no disagreement has yet arisen. In such case a decision or opinion on a referral to the Personnel Department is only for advice. The copy, it is contended, was, therefore, furnished as a courtesy (Ex. "T", 2-17, inclusive; Tr. 3816-3823). It is stated that these advisory opinions and directions to the Superintendent are in the nature of inter-office communications; that the Personnel Department is part of the Operating Department and Division Superintendents are officials of the Operating Department; that hence such advisory opinions and instructions are in reality inter-office communications and based on an ex parte statement of facts furnished by the Superintendent; that aside from distance it is the same as an inter-office communication between one official in the Personnel Department to another in the adjoining office. But an examination of sheets 1 to 17 of Exhibit "T" reveals that there was little difference, if any, between "Conclusion" in cases where there had been an appeal from those in which the Superintendent had evidently asked for an advanced opinion from the Personnel Department before acting on the claim. Even the witness had difficulty in telling the status of the case from the mimeographed copy. One was not in words more mandatory than the other. The Personnel Department evidently concluded just as finally when it gave the Superintendents its opinion before the claim had been acted on by the Superintendent as when it was giving him its decision on appeal.

We think, therefore, that there is no reason why the General Chairman should not have copies of those conclusions in the case of filed claims given by the Personnel Department to Superintendents before appeal and before the latter has acted on them. Such procedure will facilitate matters and speed up the procedure under the Amended Railway Labor Act.

If the Personnel Department decides before the Superintendent acts on it that the claim should be allowed that will end the matter. If it decides that it should be denied or allowed in modified form, the appeal may be largely perfunctory, except that new facts may be developed on joint submission which did not come out on the Superintendent's ex parte statement of the facts.

In order to cover the purpose of the Brotherhood and yet not make the rule so broad as to increase the paper work of the Carrier and require it to divulge purely inter-office information or matters which do not concern the Brotherhood, we have fashioned a proposed rule as set out hereunder. If the First Division of the Adjustment Board in Dockets 12788 and 12789 decides in favor of the Organization it will obtain in most part what the proposed rule hereunder attempts to accomplish. If the decision before the Ajustment Board is adverse to the Organization's on Article 35 as at present constituted the proposed rule will hereunder cover the point.

RECOMMENDATION:

The Board recommends that the rule proposed by the Organization in its request under Item 3, Case A-1371, be denied. In its place the following proposed rule is recommended to be added to Article 35, Engineers' Agreement, as a second paragraph thereto:

> In all cases where a claim is referred to the General Manager or his authorized representative for an opinion or decision at any time during the progressing of the claim, either before or after action by the division officers and an opinion or decision rendered by the General Manager, or his authorized representative involving the interpretation or application of the Articles in this Schedule, or any part thereof, explicitly, or by implication, a copy of the same shall be furnished the General Chairman of the Committee.

CASE A-1371—ITEM 4

I

ORGANIZATION'S REQUEST

The instant proposal is a request for a new rule and reads:

> General Chairman Furnished Copies of Instructions Pertaining to Computing Time.
>
> The General Chairman will be furnished with copies of instructions issued that pertain to computing time of engineers. (Ex. "B", 4.)

II

THE ISSUE

The issue here is whether a new rule shall be incorporated into the Engineers' Agreement which shall require the Company to furnish the General Chairman of the Brotherhood copies of instructions issued by the Carrier's Timekeeping Bureau pertaining to computation of work time of engineers (Tr. 3992).

III

POSITION OF THE PARTIES

1. Organization's Arguments:

The Organization contends that this request seeks merely to establish on the Southern Pacific Railroad a practice already followed on certain other railroads, such as the Chicago and Northwestern Railway Company (Tr. 3990; Ex. "U"); that the basic reason for the request is the need which engineers have of obtaining reliable information concerning the Company's timekeeping methods, as, for example, whether hours are reduced to miles or miles reduced to hours before time served is finally reduced to money (Tr. 3991); that the scope of the proposal is reasonable and modest since it contemplates only the furnishing to the General Chairman copies of Carrier's instructions to its Timekeeping Bureau relative to the computation of engineers' time; that the request does not go beyond that and is designed merely to obtain information on established method of timekeeping and computation; that not even a rule is sought here, but only advice to the General Chairman as to method of computation and a copy of same (Tr. 3992). Such information is essential, the Brotherhood declares, in order that the General Chairman may, in turn, notify the Local Chairmen and Local Divisions regarding the nature of the method used in computation of time of engineers.

The Brotherhood places considerable emphasis upon the point that it is not seeking through the request to change the Company's method of computation, but merely an index to the method currently used in order that engineers may comprehend accurately how service time translated into money is computed (Tr. 3994). An illustration of the difficulties confronting engineers in this regard is found in the Los Angeles District, the Brotherhood points out, when engineers in passenger service are assigned from Los Angeles through Indio to Yuma. Said District from Los Angeles to Indio is a mountain territory, where engineers receive the mountain differential, which is a higher rate than the so-called valley rate paid on the District from Indio to Yuma. The Organization states that the engineer on this run in passenger service from Los Angeles to Yuma should be able to determine whether the Carrier has paid for the overtime at the mountain or the valley rate (Tr. 3992-3993); that there is nothing in the engineer's pay check to indicate how his compensation is computed (Tr. 3994).

2. Carrier's Arguments:

The Company places principal stress upon the alleged impracticability of the instant proposal and its unreasonableness and lack of justification, insisting that its adoption could serve no useful, constructive purpose (Tr. 4001); and insists that the request is wholly unnecessary, because it always has been willing to answer any specific questions asked by the Brotherhood's General Chairman concerning computation of the time of engineers, and is quite willing to continue to do so (Tr. 4001-4002).

The instant proposal is unreasonably comprehensive in its implied scope, the Carrier alleges, and insists that this request, if adopted, would compel it to circularize the General Chairman with every kind of instruction that might be issued relating to the computation of engineers' time (Tr. 4002-4003); that even the regulations issued by the U. S. Bureau of Internal Revenue would have to be passed on to the Organization, if the instant request were granted (Tr. 4003).

There is no record of an instance of a case of an engineer who has received less money than he should have because of the method of making entries in Form 2370-A, which is used as the basis of computation of engineers' time, the Company claims and the Organization admits (Tr. 3995; Ex. "U").

Obviously, therefore, the Company insists, there is no record of errors or abuses which might constitute a problem requiring the remedy here set forth by the Brotherhood.

IV

DISCUSSION AND RECOMMENDATION

The General Chairman of the Engineers' Committee on the witness stand stated:

> The reason for the request is that the engineers for some time, some years, have been wondering in what manner the Timekeeper marks his trip report after he arrives. For example, are hours reduced to miles or miles reduced to hours before it is reduced to money, so to speak.
>
> The request is only that the General Chairman will be furnished copies of instructions issued; meaning Carrier's instructions to the Timekeeping Bureau pertaining to thus computing time of engineers. The request does not go beyond that. We are seeking to find out what method is used by the railroad. That is all there is to it . . . (Tr. 3991-3992).

An example of what it was supposed the proposed rule would do was to inform the engineer whether the Carrier paid overtime rate at the mountain or valley rate where a passenger engineer's train was late after having traversed both valley and mountain territory on the trip.

The Carrier stated that where a man wanted to know how his pay (time) was figured it always willingly answered any questions. In most cases where an engineer believes he has been "shorted" in his entitled pay, or is in doubt, a question of fact rather than method will be involved. Was the pay for his full mileage or hourage? Was it at the proper rate for the engines he operated? Was it a mountain or valley rate, or at some combination of these? Was his initial or final terminal or terminal delay time included? Was he allowed deadhead time? Was he given full credit for overtime and was it computed at the proper rate? These are all questions which he would take up with the Timekeeper and check for the computation with him. It is quite likely that the methods of translating time into miles or miles into time are so well known to all those computing it, and to the engineers that it might be difficult to lay hands on instructions concerning it. Those working in the department have grown up with these methods.

But at times instructions may go out to the various Division Timekeeing offices respecting the application of a new rate, or perhaps in more instances some change in policy as to figuring pay where the trip carries two or more different rates, such as mountain and valley, or a successive passenger and freight, or mixed or combination service, although it would seem these matters are fairly well fixed under the Rules (Ex. "A", 1-45). It would appear that were any such instructions issued which seemed to conflict with the Rules, the General Chairman would soon learn about it. But we see no good reason why the Company should not furnish the General Chairman with a copy of such instructions if and when issued, at least those hereafter issued. The Company demurs on the ground that it will mean furnishing the General Chairman with copies of instructions issued in pursuance of government directions regarding calculation of tax deductions. We see no reason why the General Chairman should not be furnished with a copy of such instructions. It is a matter the men are vitally interested in. It would place very little additional burden on the Carrier. We have some doubt as to whether the requirement will be as useful to the Organization as it now thinks, or that it will really accomplish the purpose it has in mind. As before intimated, that usually means a check-up of individual cases of doubt with the Timekeeper. But it may have some value.

We think, however, that the duty to furnish copies should go to the future. It might impose considerable burden on the Company to go back over the years searching for instructions. If any question arises as to any specific method used in computing pay covered by any instruction issued in the past we feel confident the Carrier will furnish copy of such instruction.

RECOMMENDATION:

The Board recommends that the request embodied in Item 4, Case A–1371, be adopted with the word "hereafter" inserted between the words "instructions" and "issued" making the proposed rule, as modified, read as follows:

> The General Chairman will be furnished with copies of instruction hereafter issued that pertain to computing time of engineers.

CASE A-1371—ITEM 5

I

ORGANIZATION'S REQUEST

The instant request reads:

> ROAD ENGINES IN YARD SERVICE
>
> When road engines are placed in yard service even temporarily such engines will be equipped with regulation yard engine tenders. (Ex. "B", 4.)

II

THE ISSUE

The instant request is for a new rule and presents the issue as to whether when road engines are placed in yard service even temporarily, they shall be equipped with what the Organization designates as "standard" or "regulation" yard engine tenders. The evidence developed a preliminary question as to whether there was a "standard" or "regulation" yard engine tender.

III

POSITION OF THE PARTIES

1. *Position of the Organization:*

The Organization contends that the new rule contained in the instant proposal has already been accepted as desirable, as, for example, on the Chicago and Northwestern Railway (Ex. "X"; Tr. 4013).

The primary reason for its present request is, the Union asserts, the enhancement of safety for employees, both those who operate the locomotive and the yardmen (Tr. 4013; Ex. "B", 4). In support of this contention, the Organization points out that in a yard engine equipped with a regulation tender the engineer can sit in his normal position in the cab and not only look through the front window and see the men ahead of the engine, but can easily reverse his position and look back through the rear-end window of the cab, which eliminates the necessity of leaning out of the side window (Tr. 4013). The organization asserts this safe procedure is not possible on engines with high tenders; that this fact is illustrated by Exhibits "V", "BB"; that road engines have high tenders and when used in yard service create a risk of accidents because they make it much more dffiicult for the engineer to see signals ahead or behind "at all times at the same time" (Tr. 4015); that the Southern Pacific frequently substitutes road-engine tenders for regulation yard-engine or cut-back tenders, thus increasing accident hazards in yards (Tr. 4015).

The Brotherhood asserts that quite apart from the advancement of safety, the proposal would greatly expedite yard switching operations, consequently increasing the amount of switching done, because all members of the crew, (engineers, firemen and ground men) can be in view at all times (Tr. 4015; Exs. "A", "W", "Y", "Z").

2. *Position of the Carrier:*

The Company answers that one of the objectionable features of the Organization's instant request is that no definition is given of the important phrase "regulation yard engine tender"; that the Company itself has no precise definition of such a tender, but considers such to include any tender which meets the provisions of the Interstate Commerce Commission Laws, Rules and Instructions for steam locomotives and tenders, as well as U. S. Safety Appliance Act, thus meeting all Federal requirements for yard-engine tenders (Tr. 4043; Exs. 86, 87).

The Company states that of the 244 tenders on steam locomotives in its regular yard service, 235 or 96.4 per cent are low-side tenders, although approximately 102 of its road locomotives are used occasionally in yard service to meet the requirements of recently expanded business; that such use of road engines is only supplementary to assist when yard service requirements exceed the capacity of regular yard locomotives, the Company contends (Tr. 4044; Exs. 88, 89); that it does not have spare tenders with low sides for "change-out" on road locomotives temporarily used in yard service, and to rebuild tenders for this purpose would not only cost approximately $625 per tender, but would render them unsuitable for road service because oil and water capacities would thereby be reduced. In any event, the Company declares, its practice consists merely of using in occasional yard service tenders of types commonly used by railroads throughout the United States under similar circumstances (Tr. 4046-4048; Ex. 90).

The Company contends that not only would the provision of low-side tenders on road locomotives be an unnecessary expense, but no practical value would result therefrom, since there is no record of any accidents directly attributable to the inability of enginemen to see or observe signals on road engines with high tenders used temporarily in yard service (Tr. 4047-4088; Ex. 91); that operating officials know from experience and observation that there is no undue inconvenience to enginemen, or hazard or accident on the Company's lines, because of the type of tender used in yard service; that rather than increase safety and improve conditions of switching operations, acceptance of the Organization's instant request would cause unnecessary complications which would preclude such results (Tr. 4048).

The Carrier asserts that there is no evidence to show that a rule such as embodied in the Organization's request is in effect on any oil-burning carrier; that even on coal-burning carriers, the rule is an exception (Tr. 4030-4031).

It must be remembered, the Carrier points out, that locomotive tenders are constantly becoming larger in order to provide greater capacity and make less frequent the refilling of them; that on approved tenders of the most recent model the engineer cannot see signalman on the rear footboard (Tr. 4111, 4114). On all engine tenders used in yard service the Company insists it has complied with the only regulation on the matter, that of the Interstate Commerce Commission, declaring that a tender used in switching service shall be equipped with foot-boards and a hand rail all the way across the back and with grab irons, as illustrated in Exhibit No. 87, (Tr. 4172-4173; Ex. 87).

IV

Discussion and Recommendation

In the hearing the Comany contended there was no such tender as a "standard" or "regulation" yard engine tender. Certainly no regulation issued by the Company, Interstate Commerce Commission, or even by locomotive manufacturers requiring or designating certain types of tenders to be used in yard service was pointed out to the Board. But it transpired that what the Organization meant by "standard" or "regulation" yard engine tender were those tenders which were cut back at the sides so as to enable the engineer to look directly back along the side of the tender and see the track without looking out of the side window, such as are exemplified generally by the tender shown in Exhibit "W" (Tr. 4016-4019), although it was admitted that there were other types of tenders which met the requirements (Tr. 4019-4023). It was claimed by the Company that this was not, on the long run, an advantage because in any case the engineer would not see what was on the track directly before the tender when moving backward; that even with the low tenders he could see more of the track by leaning out of the window; hence, it was not safe operating in the yard without leaning out of the side window; that dependence on looking straight back was a snare which detracted from safety. We think, however, that it is some advantage for the engineer to have as clear a view as possible in as many directions as possible. But a very salient fact is that when a box car is placed back of the tender the direct back view in then shut off. So only when the engine is running light would it generally be any advantage to have a low or side cut tender. And at all events no tender is constructed which will enable the engineer to see a switchman on the foot board without leaning out the side window (Tr. 4078-4114).

The Company's figures reveal that of the 244 tenders on steam locomotives in the regular yard service 235 or 96.4 per cent are low-cut tenders; that only 102 of its road locomotives are occasionally used in yard service to meet expanded business. Road engine tenders are presently being built with a greater capacity for water and fuel which makes them higher. The Company could not rebuild these tenders with cut away sides without diminishing the water and fuel capacity and then at an average expense of $625 each. They would then not be as suitable for road service.

The evidence developed that the cylindrical type of tank where it was not fronted with a rectangular construction typified by photograph 129, Ex. 89, representing tender class 47-C-1 was not objectionable to the Organization because the view was not obstructed. But the same cylindrical class shown by photographs 9671 and 1142, Exhibit 89, showing tender classes 100-C-3-4-5-6, items 34 to 37, both inclusive, and item 18 on Exhibit 88 are deemed objectionable for yard service by the Organization, as are likewise all the high rectangular types. A close examination of the photograph as interpreted by the oral testimony of the witnesses makes us conclude that not more than 40 out of the 244 tenders used continually in switching service over the whole Pacific lines, and at least not more than 50 out of the 102 used occasionally in yard service were objectionable to the men from the standpoint of visibility. The evidence is that no reportable accidents have been due to the failure of the engineer because of the tender.

While we believe that there is some advantage to the use of a tender in yard service which permits the engineer to look along it, as well as around it, we do not think the advantage has been sufficiently demonstrated to cause us to recommend the adoption of a rule which would compel the use of that type of tender in yard service. The Interstate Commerce Commission has the duty to investigate and prescribe regulations for the safety of employees and the public. It has not seen fit to require yard engines of the "standard" or "regulation" type to be used in yard service. If there is to be any restrictions to be imposed in this regard the approach should be through the I. C. C. We deem it unwise to recommend a rule under the limited advantage which a certain type of tender would afford as to visibility which would visit on the Carrier a severe restriction in the use of its equipment.

We would suggest that as far as possible the Company use in yard service those tenders which permit the engineer to see straight ahead, but that is as far as we care to go in the matter. Flexibility in its operation and use of its equipment should not be denied the Carrier unless it is apparent that it will substantially decrease the hazards to the public or employees by such restrictions.

RECOMMENDATION:

The Board recommends that the proposed rule embraced in Item 5 of Case A-1371 be not adopted.

CASE A-1371—ITEM 6

I

ORGANIZATION'S REQUEST

The Organization's request reads as follows:

> At terminals the Company will provide adequate wash and change room facilities, including lockers for clothing, showers, and hot water, which will be kept clean by the Company.
>
> Company will also provide table and chairs so that engineers may make out required reports and answer Company correspondence. (Ex. "B", 4-5; Tr. 4178.)

II

THE ISSUE

The issue here is whether the provision of such terminal facilities as indicated in the Organization's proposal, which hitherto have been left entirely to the volition and discretion of the Company, shall be formalized into a mandatory requirement and covered by a new rule in the agreement covering engineers.

III

POSITION OF THE PARTIES

1. Arguments of the Organization:

The Organization states that while the request was formally presented to the Carrier on November 24, 1941, the conditions it seeks to improve have been the subject of consideration for an extended period of years (Tr. 4179); that the usual procedure

has been to discuss wash room, lockers, and toilet facilities with the Master Mechanic or Superintendent, but as many as five to seven years generally elapse between the submission of a request and final action (Tr. 4179); that the purpose of the proposed rule is to fix the requirement definitely in the Engineers' Agreement so that all who are concerned will know the Company's responsibility for furnishing and maintaining in proper order the facilities detailed therein (Tr. 4179); that the proposed rule is imperative because there are a number of the Company's terminals where wash and change room facilities are inadequate and have been so for a long period of time (Tr. 4180-4193); that provision of the facilities here under consideration is essential not only for the comfort and convenience of the man, but also for the proper performance of duties assigned to engineers by the Carrier.

In this connection, the Organization urges, it must be kept in mind that not only do the men need washbowls, showers, toilets, and change space, but must also have adequate space and facilities for the making out of necessary trip reports (Tr. 4180).

Either through a voluntarily established policy or a formalized rule in the Engineers' Schedule other railroad companies provide the facilities embraced within the instant proposal. The Organization gives as an example the Chicago and Northwestern Railway and the Union Pacific Railroad (Tr. 4196-4197, 4214).

2. Arguments of the Carrier:

The Company declares that at all the principal terminals on its lines adequate wash and rest room facilities are presently provided and have been for years, according to its established policy of safeguarding the comfort and convenience of its employees (Tr. 4235-4236). The Company admits that at sub-division terminals and outside points where branch-line service terminates, or at tie-up points for local runs, such facilities are fewer and often less elaborate (Tr. 4235-4236).

Acceptance of the request would necessarily result in serious disputation and in an infringement of management's prerogatives. Translated into a positive obligation under a rule frozen into the Engineers' Agreement, the Company's policy would be subject to review by some third party having no responsibility in the premises (Tr. 4236).

The Carrier further claims that acceptance of the instant proposal would result in a wasteful expenditure of funds because frequently the assignments of engineers to certain points are temporary and seasonal, changed or discontinued, according to volume of traffic and operating conditions (Tr. 4237).

During the past fifteen (15) years, from April 19, 1930, the Company asserts it has expended a total of $304,438.65 in the installation, furnishing and improving of wash, rest and change rooms for employees, $32,667.31, or 10.73 per cent of which has been facilities designed for the exclusive use and convenience of the Company's enginemen and firemen, who also have joint additional facilities with other employees, costing $34,268.70 (Tr. 4237-4238). This, despite the fact that engineers, as of February 1945, constituted only 3.3 per cent of the total number of employees and the firemen only 3.5 per cent, the Carrier adds (Tr. 4238).

Not only does it endeavor to provide adequate washroom, toilet and reporting facilities, says the Company, but it gives careful consideration and takes necessary action whenever employees, either individually or through representatives, register a complaint or make a suggestion for improvement (Tr. 4238-4239). In brief, the Carrier asserts, there is no justification for the request; it is wholly unnecessary and would serve no other purpose than to enhance the basis for disputes (Tr. 4239).

IV

Discussion and Recommendation

This case involves a sharp dispute as to facts and as to what are adequate facilities under various circumstances. The parties put on witnesses who testified in a very casual and general way about the facilities at various places. The Organization complained that at certain places chairs and tables were provided at the roundhouse for making out reports, but that after that the men were compelled to climb between cars to get to a wash and change room, or walk a long distance around a standing train; that there were at other places not sufficient showers; at others no hot water; at others the wash rooms were not cleaned, etc. The men jump into their cars and go home to change, or if away from home, they go to their lodging house, which is usually within walking distance of the roundhouse.

It also makes a point of the fact that the proposed rule as drawn does not specify where "at terminals" such wash and change room facilities should be provided; that it might mean demands for piping hot water at certain out-of-the-way points where just one or two men went off duty.

This is peculiarly a case where a joint survey should be made by representatives of the Company and the engineers and firemen of the facilities over the entire system. The report of this Committee should show the extent of facilities at each point presently provided, the state of repair and maintenance, how much they are used at various times of the year, how many engineers and firemen start and end their trips at these points, the need for additional facilities at different points on the road and yard, if any, and other relevant data in regard to the whole matter. A practical contractor could accompany this liaison committee in its inspections and after making note submit a plan of development at each place if needed. The very fact that such a committee was making the survey and that an authoritative report would result would tend to quiet complaints and fix the facts. In matters such as this many complaints may be based on a single incident, or may be made without sufficient thought or knowledge of circumstances or conditions.

We cannot see that a rule would be of much value. The rule would call for "adequate" facilities. The men, or one, or some of the men, might say the facilities were not adequate; the Company would claim that they were. In that case we would be much in the same position we now are. It is difficult to see how the Adjustment Board could decide such a question of fact if a violation of the proposed rule were claimed. This is a case for common-sense cooperation in attempting to come to agreement as to conditions and needs and to adopt plans for consummating reasonable additional requirements.

RECOMMENDATION:

The Board recommends that the proposed request for the addition of a rule as embraced in Item 6 of Case A-1371 be not adopted.

CASE A-1371—ITEM 7

I

Organization's Request

The Organization's request reads as follows:

> The cleaning of engines ahead of the cab, when running out of division terminals, will be given proper attention by the Company; cab windows and inside of all cabs will be cleaned, and engines will not be placed in service until paint is dry. (Ex. "B", 5.)

II

History of the Case

The instant request was among the considerable number of items submitted to the Carrier by the Organization on November 24, 1941, and was denied. Subsequent mediation efforts of the National Mediation Board, as well as its proposal for arbitration, were unsuccessful. The case was heard by the present Emergency Board at San Francisco beginning May 22, 1945.

III

THE ISSUE

There is no clause in the Engineers' Agreement covering subject matter such as comes within the purview of the instant proposal. The basic question is, therefore, whether what may be characterized as the Carrier's responsibility for "good housekeeping", now voluntarily assumed, shall become a mandatory requirement formalized into a Rule of the Engineers' Schedule and consequently subject to joint supervision.

IV

POSITION OF THE PARTIES

1. *Organization's Contentions:*

The Engineers presented the following:

The conditions which constitute the subject matter of the request have for many years created a problem of serious concern to engineers. Protestations against these conditions customarily have been filed by the complaining engineers with the road foreman of engines or master mechanic, and in many instances complaints have been registered with the Local Division of the Brotherhood. Sometimes the Local Division instructed the Local Chairman to discuss the situation with the Superintendent, and, failing a successful local settlement of the matter, appeal was made to the General Committee, which took the matter up with the Superintendent of Motive Power (Tr. 4390-4391). It stated that through all these negotiations promises of improvement were made by officials of the Company, but action often has been dilatory, and engineers continued to find engines dirty, with sand on top of the running board as a result of filling the sand dome, windows of the cab uncleaned, and sand and rubbish in the cab of the locomotive (Tr. 4391-4392).

The Brotherhood contends that the importance of clean windows and clean cabs generally is a matter of common knowledge, and has been so clearly recognized by some railroads, as for example, the Chicago and Northwestern Railway, as to be incorporated into a Rule of the Agreement covering engineers (Tr. 4393; Ex. "DD"). Moreover, the Organization states Award 5511 of the National Railroad Board of Adjustment, First Division, sustains a claim for violation of said Rule (Tr. 4393-4395).

The Organization points out that the comfort of the engineer is directly dependent on a clean locomotive because he spends one-third of his working life in a cab of an engine. It is asserted that the only means of positively guaranteeing that safety, comfort and decency will be safeguarded is to cover such conditions by a Rule, since experience indicates the Organization cannot rely upon officials of the Carrier to take prompt action in these matters (Tr. 4393-4395-4396).

2. *Carrier's Contentions:*

The Carrier answers that everything possible and practicable is done by it to provide and maintain clean locomotives for its engineers and firemen. Evidence is submitted by the Company detailing the laborers and craftsmen responsible for cleaning and painting engines (Ex. 92; Tr. 4397-4399). The Company asserts it places definite responsibility upon the Master Mechanic of each Division for proper cleaning of locomotives, including part ahead of cab, cab windows, inside of cabs, and painting of locomotives. Such officials as Roundhouse Foremen and Road Foremen share in this responsibility and are expected to observe the condition of locomotives leaving terminals (Tr. 4398-4399).

In the light of the evidence and testimony it submits, the Carrier asserts the proposed Rule is totally unnecessary, can accomplish no constructive or positive purpose, and inevitably would constitute a source of unnecessary dispute and friction (Tr. 4399).

It is its established policy, the Company declares, not only to have its locomotives kept clean, but also to see to it that the paint is dry before they are placed in service at terminals. Under the proposed Rule, the Company maintains, it is quite conceivable that an engineer might refuse to take a locomotive out if he thought it did not meet his standard of requirements (Tr. 4401).

V

DISCUSSION AND RECOMMENDATION

Both the Carrier and the Organization are in agreement that engine cabs and windows should be clean. The Organization in this case, as in some others, presented a rule which obtains on the Chicago and Northwestern Railroad. The fact that that road, or some others, have rules which are not in the instant agreement may have stimulated certain of these requests. However, we do not doubt that with all the locomotives going out in all the divisions some are not properly cleaned. But we do not think it is a common occurrence. At all events it is an administrative matter in which both parties are concerned. It should not be made a part of a contract. If matters of this sort are placed in the fundamental schedule it will ultimately become as big as a Bible.

This is again one of those matters which a little tolerance of occasional shortcomings and a cooperative attitude will serve better than a whole raft of rules.

RECOMMENDATION:

The Board recommends that the request for a new rule as contained in Item 7 of Case A-1371 be not adopted.

CASE A-1371—ITEM 8

I

ORGANIZATION'S REQUEST

The Organization's request reads as follows:

> Seat box, arm rest and back-rest cushions will be furnished and kept in good condition by the Company. Throttles and cocks in cab will be kept packed. Commencing November 1st of each year locomotive cabs will be fixed up and kept in good condition for winter service. (Ex. "B", 5.)

II

THE ISSUE

Presently no Rule in the Engineers' Agreement covers subject matter detailed in the request, since provision and administration of the conditions under consideration have hitherto been regarded as within the exclusive jurisdiction of management. The fundamental question here is, therefore, whether matters involving the proper furnishing of engine cabs and proper maintenance of throttles, cocks, and locomotives generally, which hitherto have come within the purview of voluntary managerial responsibility, shall henceforth be covered by a Rule in the Engineers' Schedule and consequently subject to joint supervision.

III

POSITION OF THE PARTIES

1. Arguments of the Organization:

The Organization argues that a steam locomotive at its best does not ride comfortably, hence the need for a seat box with a spring cushion kept in good condition; that similarly, satisfactory arm rests are essential to comfort and convenience of engineers in operating engines. The Brotherhood states that the need for properly packed throttles and cocks should require no comment, since it should be obvious to everybody that leaky valves of all kinds cause great discomfort and affect adversely the health and safety of the men. The Organization points out the importance of the requirement that each November 1st locomotive cabs shall be fixed up and put into satisfactory condition for winter service cannot be over-emphasized in view of the relation of these matters to the comfort, convenience, and health of the men (Tr. 4409-4411).

It is contended that, despite the obvious necessity and benefits of assuring the conditions embraced within the proposal, it has been extremely difficult to obtain prompt attention and effective action when unsatisfactory situations have been called to the attention of the Carrier. Ever since 1941, the Organization claims, it has been spending much time, effort and money to correct unsatisfactory working conditions, but promises made by the Mechanical Department have not been fulfilled; hence, the conclusion of the General Committee that the only effective way of obtaining a solution is through a new Rule in the Engineers' Schedule (Tr. 4409-4410; 4413-4414).

It is stated that the proposed rule is supplementary to and in no way in conflict with the laws, rules and regulations of the Interstate Commerce Commission governing the condition of throttles, cocks and locomotive cabs. The procedures involved in seeking a remedy through appeal to the I. C. C. are complicated and action necessarily slow because of detailed investigations entailed therein (Tr. 4421-4423). Equally difficult procedural conditions are attached to recourse to the Adjustment Board (Tr. 4422-4423). A rule in the Engineers' Schedule will definitely fix responsibility and encourage prompt improvement of unsatisfactory conditions, the Brotherhood believes (Tr. 4414, 4422, 4427).

The Organization cites an even more comprehensive Rule in the Engineers' Schedule on the Chicago and Northwestern Railway (Tr. 4430-4431).

2. Carrier's Contentions:

The Company insists that it is careful to keep in good condition the seat-box, arm-rest, and back-rest cushions for locomotives. This is its established policy and out of it has been developed superior types of equipment in this category compared with neighboring railroads (Tr. 4437; Exs. 93, 94, 95).

It is contended that very few specific complaints have been received from engineers relative to the type or condition of cushions; that in seventeen hundred (1700) work reports examined there were only three (3) reports of poor cushions (Tr. 4461-4462); that whenever complaints are filed new or rebuilt cushions are furnished, there being provided annually approximately eight hundred (800) seat-box cushions, one thousand (1000) arm-rest cushions, and nine hundred (900) back-rest cushions; that in 1944 alone the cost of new equipment of this type was $19,578.10 which is probably less than half of the cost of repairs made to existing equipment (Tr. 4447).

With regard to throttles and cocks in cab, the Carrier claims that these are kept packed in compliance with Rules 156 and 50 of the I. C. C. Laws, Rules and Instructions shown in Exhibits 96 and

97. These same regulations also require that locomotives be kept in good condition for winter service. In view of such federal regulation there is no necessity for the proposed Rule in the Engineers' Agreement (Tr. 4449; Exs. 96, 97, 98). Moreover, the Company claims, it would be unwise to freeze into a Rule the substance of federal regulation, which is subject to periodical modification by the I. C. C. (Tr. 4450); nor must it be forgotten that all locomotives are subject to frequent inspection by the inspectors working under the I. C. C. (Tr. 4451-4452). As a matter of fact, asserts the Company, there are relatively few cases of leaks reported, because engines are thoroughly inspected by its own inspectors when said engines come in (Tr. 4466).

IV

DISCUSSION AND RECOMMENDATION

In this case again we have several matters involved which do not lend themselves to a recourse to contract status for remedy. The engineers certainly are entitled to as comfortable seats, arm and back rests as can be devised, especially since engineers at fairly advanced age are now being used. The type furnished by the Company were brought into the hearing room. There seemed to be no particular objection to them. From the Company's testimony they compared favorably with those provided on other roads. There was no showing that any road furnished any better ones and some testimony that those on some roads did not measure up to these provided by the instant Carrier. The main complaint seemed to be that in individual cases there was a failure to provide comfortable seats and back rests, or keep them in proper repair, and that the delay in remedying the situation was unreasonable. In such equipment the personal equation looms large. Men vary in size and weight. A cushion built for a small man may not be comfortable for a large man. And since comfort is involved any small defect is its own constant reminder. Even temperament may be a factor. The Superintendent of Motive Power, a very intelligent and forthright witness, stated that the Company was aware that "riding a locomotive all day was a hard, uncomfortable thing", and that the Company made every effort within reason to suit each man's taste and keep the seat, arm and back rest in good repair.

The Board is not unmindful of the need of comfort of the men riding these cabs.

While there may have been incidents when repairs or adjustments were not made as soon as could be, we do not think that a contract with the Company to do what seemingly it is doing would be of aid.

Likewise, we see no good reason to include in the rules a stipulation that the Company keep the throttles and cocks in the locomotives packed. While escaping steam in winter or summer in the cab is not only annoying, but may have safety aspects, we think the Company may be relied upon to do that which is to its own interest. The regulation of the Interstate Commerce Commission provides that these facilities be kept in good condition (Ex. 96 and 97, I. C. C.; Rules 156 and 50).

Federal inspectors make periodic and sometimes surprise inspections of these features. The work report of the engineer should include any defect in throttle and cocks, as well as in seats, arm and back rests. We think that there are sufficient sanctions on the Company, even if its own interest did not dictate keeping its locomotives in condition for winter, as well as summer use. Another need not be added.

RECOMMENDATION:

The Board recommends that the request of the Organization as embraced in Case A-1371, Item 8, be not adopted.

CASE A-1371—ITEM 9

I

ORGANIZATION'S REQUEST

The Organization's request reads as follows:

> When Local Chairmen, General Chairmen, or individual engineers call attention of the Master Mechanics to hard riding locomotives, or where reports are made regarding same, the complaint will be promptly investigated and corrective measures applied to eliminate the complaint. If investigation does not reveal anything that would give rise to engine riding hard, the Road Foreman will ride the engine with the engineer filing the complaint and will jointly determine the cause, if possible. (Ex. "B", 5.)

II

THE ISSUE

While there is no Rule in the Engineers' Agreement relating to such technical matters as come within the scope of the instant proposal, there appears to have been a mutual understanding, implemented in a letter dated April 1, 1930 (Company File E & F 60-128; Organization File E-3577) which purported to regulate the conditions under discussion here. The question at issue is, therefore, whether regulations governing the determination and improvement of hard-riding engines, hitherto primarily within the jurisdiction of management but to an extent subject to mutual understanding, shall henceforth be incorporated as a formal Rule in the agreement covering engineers.

III

POSITION OF THE PARTIES

1. Arguments of the Organization:

The Organization contends that the substance of the new Rule has been accepted in principle by the Carrier at least since 1928 through a mutual understanding with the Brotherhood concerning definite procedure to be followed is discovering the causes of hard-riding locomotives (Tr. 4824-4825). Said procedure was reaffirmed in official correspondence between the parties in 1930, and communications addressed to all superintendents and master mechanics, the Brotherhood asserts (Tr. 4825-4826; Ex "FF"). The Brotherhood thinks that, despite the existence of what was generally understood to be an agreement in this matter, the problem of hard-riding engines has not been solved, consequently a Rule in the Engineers' Schedule is deemed imperative (Tr. 4827); that this is the only effective way of encouraging alertness on the part of Company officials regarding the problem (Tr. 4833-4835).

It is noteworthy, the Brotherhood states, that officials of the Company have agreed that hard-riding locomotives are not in the best interest of anybody, since they are destructive of rails and the locomotives themselves, and are injurious to health and property generally (Tr. 4831). The Organization claims that the Company admits that engines in such condition affect adversely the health and comfort of the men who operate them and results in unnecessary wear and excessive maintenance cost, covering both machinery and roadbed (Tr. 4832).

It is necessary to emphasize, the Organization asserts, that frequently the Company's operating officials directly concerned disagree with engineers' complaints with regard to hard-riding locomotives, and arbitrary decisions are reached in the matter. Consequently, it is insisted that it is necessary to incorporate into a Rule a provision for joint investigation and determination of the condition and causes of alleged hard-riding locomotives. It is maintained that with a Rule in the Schedule, road foremen, roundhouse foremen, superintendents and engineers will all know the mutually accepted procedure in the matter, with the result that complaints can be checked, misunderstandings avoided and dissatisfaction prevented or minimized (Tr. 4833).

2. Arguments of the Carrier:

Discussions between representatives of the Engineers' Organization and of the Company concerning alleged hard-riding locomotives were conducted in 1924, 1928 and 1930, the Carrier states, and out of these conferences came specific instructions which were issued to all superintendents and master mechanics on April 30, 1930, copies of which were sent to the General Chairmen of the Engineers' and the Firemen's Organization. These instructions definitely provided for investigation of all complaints concerning hard-riding engines and for corrective measures whenever necessary, and further provided that in case of dispute over the findings of an investigation, the engineer making the complaint should be sent out on a testing trip without loss of time, accompanied by Road Foreman of Engines (Tr. 4847-4848). These instructions have been in forced ever since their enception on April 1, 1930, with the result that the Company's attention has been drawn immediately to the few cases of hard-riding locomotives requiring correction alterations or repairs (Tr. 4849).

The Carrier affirms that not only is the instant proposal unnecessary because the Company adheres faithfully to the aforementioned understanding with engineers and firemen, but also because the Company has no other alternative than prompt corrective measures under the requirements of Rules 104 and 148 of the Interstate Commerce Commission's Laws, Rules and Instructions for Inspection and Testing of Steam Locomotives and Tenders (Tr. 4849-4850).

The causes of hard-riding locomotives, says the Carrier, are: driving wheels out of counterbalance, various wheel defects, stuck driving-box wedges, defective drawbar or chafing iron conditions between engine and driver, valve motion defects, and improper operation by the engineer. The Company insists that its vigilant interest in the discovery and removal of all of these causes is revealed through established policy and instructions issued to officials most directly concerned (Tr. 4850 ff; Exs. 105, 106, 107, 108, 109, 110).

The Carrier declares that not only is the proposed Rule totally unnecessary in view of the Company's established policy of giving immediate and constant attention to the problem of hard-riding engines, but it would be unwise to freeze that policy into a Rule in the Engineers' schedule for the obvious reason that federal regulations are constantly being changed and amended, as occasion requires, and said Rule could not possibly modify or supersede I. C. C. requirements, or otherwise compromise the Carrier's obligations to comply therewith; such a Rule, inflexible in its provisions, could only cause the Company embarrassment in a field already amply controlled by public authorities.

Finally, the Carrier declares its experience to reveal that 90% of the complaints regarding hard-riding locomotives are received from 10% of the engineers, and that fully 95% of the defects contributory to hard-riding engines are found promptly by mechanics in the shops (Tr. 4866, 4867). Indeed, asserts the Carrier, relatively few complaints have been registered with the appropriate officers (Tr. 4898, 4902).

IV

DISCUSSION AND RECOMMENDATION

The Carrier and the Organization are in agreement that rough-riding engines are highly undesirable and should be corrected. Engines which, for any cause, are not operating smoothly are a matter of mutual concern, to the men for reasons primarily of physical comfort and health, and to the management to avoid damage to engines, roadway and for reasons of safety. It was largely assumed that continued riding of an engine with abnormal vibration had a definite relationship to health and it was admitted that it caused physical discomfort.

There has been in the past a fair measure of cooperation in the procedure followed: of report by engineers, inspection by mechanical staff, repair and adjustment in shops and a performance test under actual road conditions by the engineer and Road Foreman.

The Carrier insists that a rule requiring the road performance test is unnecessary because it is to its own interest to remedy the condition and that it does everything in its power to do so. The Organization contends that if the policy were embodied in a rule it would assure more prompt attention. It should be noted in this connection that the proposed rule provides only for a road performance test by an inspector employed by the Company. It appeared at the hearing that there is only a small minority of engineers whose complaints of hard-riding engines might be largely subjective, a reflection of their own peculiar personal views. Previous experience indicates that disputes based upon conflicting reports are likely to be infrequent and few in number. But if an engineer, whether his belief is founded on a purely subjective basis or not, labors under the idea that he is required to ride what at least seems to him to be a hard-riding engine, and it will continually rankle within him.

The performance test under the observation of a mutually agreed upon party, in case of disagreement as to the way the engine rides, would give opportunity to test such subjective complaints and also to catch any peculiar or unskillful handling of an engine by the engineer which would cause irregular engine action.

Both parties agreed that road performance was a valuable test, in the absence of a scientific method of determining whether an engine was producing more than normal vibration, or revealing faults not readily found in the shop.

The proposed rule does not provide for the case where the representatives of the Carrier and the engineer are in disagreement as to whether the engine is hard-riding. Nor does it appear that the Company has in any way provided for such contingency in its instructions. We think such provision is advisable and for that reason, and because we think the matter materially concerns the working conditions of engineers, we believe that the requested rule with the additional features of a test by a mutually agreeable neutral in case of disagreement should be adopted.

RECOMMENDATION:

The Board recommends that the proposal contained in Item 9, Case A-1371, be adopted with the following additional paragraph:

> If there is a difference of opinion between the engineer and the representatives of the Company as to whether an engine is hard riding, a mutually acceptable party as referee shall be designated to ride the engine with the engineer and his decision as to such question shall be final.

CASE A-1371—ITEM 10

I

ORGANIZATION'S REQUEST

The Organization's request reads as follows:

> The Management will cooperate with Local and General Chairmen by furnishing a check of mileage of individual engineers on request. (Ex. "B", 5.)

II

THE ISSUE

The instant proposal directly involves application of the mileage regulation rule embodied in Article 32, Section 6, of the Engineers' Agreement, especially subsections (k) and (l) which read:

> REGISTERING MILES
>
> (k) Upon arrival of each trip, engineers shall register their total mileage, or equivalent thereof, for current calendar month, on the roundhouse register, showing separately freight and passenger mileage, giving total mileage each class of service to date.
>
> ENGINEERS FAILING TO REGISTER OR INCORRECTLY REGISTERING THEIR MILEAGE: Should an engineer fail to register his mileage correctly or willingly violate the mileage regulations, he will, upon written request from Local Chairman,

> Brotherhood of Locomotive Engineers, be held off his assignment two days for each 100 miles equivalent, or fraction thereof, exceeded. Engineers who have not earned the maximum mileage in a 30-day period are privileged to go out on assignment, notwithstanding the trip may result in their making in excess of the maximum mileage, and miles made in excess of the maximum, in such cases, will be charged against the following period, as provided in Article 32, Section 6 (i).
>
> QUESTION: What action should be taken when Superintendent or Roundhouse Foreman is notified by Local Chairman in writing that engineers are neglecting or refusing to register their mileage and when officially notified by Local Chairman that engineers had made necessary mileage specified in agreement?
>
> ANSWER: When notified as above that engineers are failing to register their mileage, they will not be called for service until they have complied with the rules, except in cases of emergency when no other engineers are available, and when officially notified that engineers have made specified mileage, they will not be called for further service during that month, unless some emergency makes their use necessary.
>
> (l) Local Chairmen, Brotherhood of Locomotive Engineers, will have access to time books for the purpose of checking mileage made by engineers under this Section, excepting when timekeepers are using books to get out payrolls or distributions.
>
> Timekeepers will give the Local Chairmen whatever assistance they can during working hours which does not interfere with performing regular duties. (Ex. "A", 97-98.)

The question at issue in the request is basically whether in addition to the facilities provided in the current Rule cited above, the Carrier shall be required to furnish a record of individual engineers' mileage when requested to do so by the Organization here involved. This issue necessarily revolves around the determination as to whether such additional service on the part of the Carrier is an indispensable condition of implementing the existing scheme for the equitable distribution of mileage among the engineers.

III

POSITION OF THE PARTIES

1. *Organization's Contentions:*

The Organization contends that the purpose of the instant proposal is to facilitate as much as possible the work of the Local Chairmen in the regulation of mileage as provided in Article 32, Section 6, of Engineers' Agreement; that Local Chairmen are responsible for regulating the number of men on a working list, that is, on a pool freight list, extra passenger list, or extra freight list; that in order to assure themselves that the mileage regulation rule is working properly and to handle effectively complaints involving the failure of engineers to earn the minimum stipulated under said rule, Local Chairmen must check the men's total earnings and divide the total by the number of men assigned (Tr. 4477-4478); that not only does this procedure assure equitable distribution of mileage among engineers, but also assures the Carrier of sufficient men to carry on its business effectively (Tr. 4478), that while under the present arrangements a Local Chairman is compelled to waste a lot of time and energy in obtaining the necessary data (Tr. 4479).

The instant request is not novel; it is already incorporated in rules which are a part of agreements covering engineers on such railroads as the Illinois Central, El Paso and South Western, and Western Pacific, asserts the Organization (Tr. 4480-4482; Ex. "EE").

The Organization contends that the roundhouse registers, its principal source of necessary information at present, are unsatisfactory, incomplete and unreliable, and Timekeepers' records are not always available (Tr. 4740, 4483, 4488); that the Carrier presently cooperates with the Local Chairmen in answering requests for mileage checks, but these, like reports of monthly earnings, often are inordinately delayed, especially in the current emergency (Tr. 4489, 4491, 4498).

It should be noted, declares the Organization, that requests such as come within the scope of the instant proposal are relatively few and involve only a small number of engineers, as, for example, only 40 or 50 out of a total of about 300 engineers on the Western Seniority District (Tr. 4491-4492).

Finally, the Organization asserts that the only completely accurate record as to whether individuals have exceeded the maximum of 3800 miles for pool freight service engineers and 4800 for passenger engineers, is in the Carrier's centralized accounting and timekeeping office, hence proper regulation of mileage is dependent upon the Organization's ability to receive such information promptly from the Carrier (Tr. 4759; Ex. 99).

2. *Carrier's Contentions:*

The Carrier contends that the request is wholly unnecessary, since the Company furnishes sufficient information for all reasonable and practical purposes, if properly utilized by the Organization; that this information includes not only the data provided under Article 32, Section 6, of the Engineers' Schedule, but semimonthly statements of engineers' earnings; that together with the engineers' reports of mileage earnings entered by them on the roundhouse register, this information is adequate (Tr. 4514); that the application of rules governing mileage is for the benefit of the engineers and is the responsibility of local representatives of the Organization and does not come within the jurisdiction of the Company. The Company asserts that it is not concerned as to whether mileage and, therefore, earnings are distributed among the engineers. It is only interested in having available men to man its trains. It entered into the agreement for mileage distribution, but only at the behest of the Organization. It asserts it should not now be obliged to expend time to furnish data which would be only for the purpose of aiding the Organization in a matter which is purely the Organization's concern, especially since the Organization already has availability to information which will readily permit it to check on each engineer's mileage at any time during the month. Beyond its present obligation the Company declares it does not wish to participate in the administration of mileage regulations (Tr. 4516-4517).

The Company further asserts that the scope of the proposal is very broad and might easily impose an inordinate burden upon its accounting facilities; that the request actually means the work of checking mileage, instead of being done *by* the Local Chairman, as contemplated by the present rule, will be done *for* the Local Chairman by the Company at its own expense; that this can involve not merely semi-monthly or monthly reports, but more frequent ones and conceivably daily reports, if deemed necessary by the Organization (Tr. 4494-4495).

Even if the Company were disposed to broaden its participation in mileage regulation, which it is not, the Carrier insists that the current shortage of clerical personnel would make acceptance of the request impracticable; that the present difficulties experienced in properly meeting its obligations in computing time of engineers to meet current payrolls would be greatly multiplied with no practical results not already possible through the Organization's effective use of available data; that since the beginning of this country's participation in the War the Company's shortage of clerical personnel, much of it time-keeping personnel, has varied between 3,000 and 6,000 (Tr. 4517); that under such circumstances it would be complete folly to convert its present voluntary cooperation into the compulsory cooperation envisaged in the instant request, which can only mean increased burdens and inconvenience (Tr. 4602). In this connection, asserts the Carrier, Form S. 2370-A (Ex. 99) which is involved here, does not contain totalled mileage, but only money totals; that no mileage record is in the hands of the Company except the registered mileage, untotalled, which appears on this Form, nor does Form C. S. 559-A (Ex. 100) bear a record of mileage earned; that consequently acceptance of the Organization's proposal would necessitate the keeping of a separate and additional set of records, requiring more timekeeping and timekeepers (Tr. 4460, 4664, 4666, 4668); that whatever alleged difficulties are being encountered by the Brotherhood of Locomotive Engineers in regulating mileage can be obviated by numerous expedients already available, as, for example, adoption of such a rule as currently exists in the Company's agreement with the B. L. F. & E., which has proved an effective method of checking mileage and imposing penalties (Tr. 4728-4730, 4732-4733; Ex. 102, p. 100 ff., Article 43, Section 5).

IV

Discussion and Recommendation

The instant request pertains to obtaining a check of mileage of individual engineers for the purpose of regulating the working list of engineers as specified in Article 32, Section 6, (a), (c), (d) and (e). It is not only for the purpose of distributing work over all the engineers, but to give the engineers of higher seniority the assurance that they will obtain earnings which will equilibrate mileage between the minimum and maximum limits, for instance, in assigned service between 4000 and 4800 miles for passenger, and between 3200 and 3800 miles for freight service. The engineers of lower seniority return to the firemen's working list on force reduction. The firemen, therefore, are interested in th matter of force reduction and hence in the matter of correct ascertainment of individual engineer's mileage, both in pool and assigned service.

The mileage check of a whole group is made for the purpose of regulating the working list of a pool, or extra board, i. e., determination by the Local Chairman as to whether men should be added or taken from the pool, or extra list, so as to permit those in the pool to make between the minimum and maximum mileage. This might involve a pool as high as thirty or forty men as in the Western Division. The Local Chairman may have as high as three hundred engineers on his list alphabetically. He would have to pick from that alphabetical list those in a pool and add their mileage and divide by the number of men. It is claimed by the Company that this request would practically foist on the Company the clerical work of furnishing the total mileage of the pool, leaving for the Local Chairman only the small task of dividing the total mileage by the number of men in the pool. In short, the Company would be furnishing all the data for the regulation of the working lists which the Company contends is solely for the benefit of the men.

The other reason for a check would relate to an individual's mileage, to determine whether he at any time had exceeded his maximum mileage, or not, or had attained the minimum. Under Article 32, Section 6, Subsection (b), Engineers' Agreement, it is provided that engineers shall register their accumulated mileage at the end of each trip on the Roundhouse Register. It is contended by the Carrier that up to the date of termination of the last trip the Local Chairman can obtain at those points the accumulated mileage of any individual engineer up to that date, add them, and get the total pool mileage. The Organization urges that in many cases the Roundhouse Register is not accurate and that in many cases the Local Chairman would have to go some distance to inspect it; that all the Organization desires is a check from the Company on the mileage.

The witness for the Organization stated:

> That this question of checking the mileage, if this rule were granted, if the Carrier would cooperate, would be a simple matter for the timekeeper. He would reduce the earnings made into miles each day as he checks the payroll, and at the end, we will say, of the payroll period he would have the total sum there, instead of asking to go back and check 15 days. It is a very simple matter for the Timekeeper to do that each day as he checks the payroll. (Tr. 4488.)

It appeared, however, that there had been a change in the timekeeping system of the Carrier, which the Organization apparently was not aware of. Before 1931 the time of each engineer was kept on a separate sheet showing rate, the mileage, the overtime at $\frac{1}{8}$ and $\frac{3}{16}$ rate, initial and final terminal time, deadhead time. These were kept currently so that up to any date to which the trip reports maintains a sheet assigned to each individual to show the miles or had been returned it would be ascertained in hours and minutes, straight and overtime, just what each engineer was credited with. This could in turn be turned into mileage by a simple formula. It was a comparatively simple matter to go over these sheets and abstract any information wanted, either in miles or in money, or in overtime.

But around 1930 the Company changed its system. It no longer maintains a sheet assigned to each individual to show the miles or money that he earns. The trip reports are now checked against the train sheets to determine the correctness of the claims as prescribed. The time tickets are then rated by the Timekeepers. The trip report, known technically as Time Return and Delay Report of Engine and Train Employees, Form 2370-A" is computed in money (Ex. 103). The money earnings are transferred to the Time Record, Form 559-A (Ex. 100) as money and not time earnings where they are totalled for the pay period and deductions subtracted. These totals are then transferred to "Payroll" Form S-180. At no point along the course as described is it possible to get an accurate translation from money earnings back to equivalent mileage (Tr. 4656-4664). In order to comply with the re-

quested rule and have the information "on tap" which the Organization could call for under such rule, the Company would be required to maintain a daily record of the mileage actually run, plus any other allowances that would have to be determined on a mileage basis. Thus only could the information be given readily in such time as the Organization might deem "cooperative". The alternative would be to visit upon the Company the task of going over the batch of each engineer's trip reports for the particular period requested by the Organization and compute the mileage on each day the trip was made during such requested period from all the data thereon and add the same. If this information were requested for a number of men it would be no inconsiderable task. The Carrier fears that if the Organization has the right to demand this information on request, it will take advantage of the power to such degree as to note use Roundhouse Registers, but simply call up or write the Timekeeper's office as the easy and expeditious manner of obtaining the information. The Company thus fears that it will, in effect, be compelled to do the work in a matter which is primarily for the purpose of the Organization. Such work, if required to be done in every time-keeping office on the system in order to comply with any request of any Local Chairman, or the General Chairman, at any time for a stated period would probably entail considerable clerical work and require additional clerical employees at a time when the Company is shorthanded in that regard.

It is only fair to say that apparently the Brotherhood was not aware that correct time records for individuals had been dispensed with. It was laboring under the impression that current records during every pay day period were kept, as well it might in the light of Section 6 (1), Article 32, of the Engineers' Agreement. Had it been aware that to compute the accumulated mileage of any engineer for any stated period up to 15 or 20 days would require an examination of his individual trip for the period and a translation of all items given in hourage to mileage and the adding of all such data reduced to a mileage basis with a totalling of all these for the period, perhaps the request would have been modified.

While the regulation of the Engineers' working lists is primarily for the benefit of the Organization and the engineers, we think the Company indirectly derives some benefits from it, although they may not be apparent. If the work of those officers of the Organization charged with the duty of regulating working lists may be substantially aided by the cooperation of the Carrier, that should be done. But the work visited on the Carrier to enable it to cooperate should not be great. It should be such as would permit the data to be copied from a record without much computation and which could be done in a comparatively brief time. The request as phrased would put it in the power of the Organization to visit on the Carrier a great deal of clerical work to save the Local Chairmen the task of obtaining data for working list regulation, which is now their responsibility.

The members of the Board are not sufficiently familiar with the practical aspects of the different phases of regulation of working lists to attempt to recommend a modified request. This should be done after consultations between the Management and the Brotherhood in which all aspects of the matter could be gone into. We believe the Carrier will cooperate in order to fashion a rule which would aid the Local Chairmen to obtain data needed for a checkup without requiring the latter to make trips which might be saved by a few moments of inspection of records by the Carrier, and yet not contain the possibility that some future officers of the Organization will use much of the Carrier's time and clerical help simply to relieve the Organization of doing work primarily and preponderately for its benefit or for the benefit of the engineers. We have concluded, therefore, that the request should be denied without prejudice so as to leave open the way for the consultation suggested.

RECOMMENDATION:

The Board recommends that the request embraced in Item 10 of Case A-1371 be not adopted.

CASE A-1371—ITEM 11

I

Organization's Request

The Organization's request reads as follow:

> HEADLIGHTS, ENGINES IN ROAD SERVICE
>
> (a) Each locomotive used in road service between sunset and sunrise shall have a headlight which shall afford sufficient illumination to enable a person in the cab of such locomotive, who possesses the usual visual capacity required of locomotive engineers, to see in a clear atmosphere a dark object as large as a man of average size standing erect at a distance of at least 800 feet ahead and in front of such headlight; and such headlight must be maintained in good condition.
>
> (b) Such headlights shall be provided with a device whereby the light from same may be diminished in yards and at stations or when meeting trains.
>
> (c) Each locomotive unit shall have cab lights which will provide sufficient illumination for the control of instruments, meters and gauges to enable the engineers to make accurate readings from their usual and proper positions in the cab. These lights shall be so located, constructed and maintained that light will shine on those parts requiring illumination. There shall be a light conveniently located to enable the engineers to easily and accurately read train orders and time tables, and so constructed that it may be readily extinguished. (Ex. "B", 5-6.)

II

Disposition

The Brotherhood of Locomotive Engineers concluded not to submit any evidence concerning Item 11 of Case A-1371.

In view of the Organization's decision in this matter, the Company concluded it was not obliged to go forward with the presentation of its testimony and evidence in the same matter.

The Carrier, however, pointed out that the subject matter covered in the instant request is covered by federal regulations which are in considerable detail as to locomotive headlights and lights in cab. The Organization's proposal, stated the Carrier, parallels the existing rules of the Interstate Commerce Commission embodied in its publication entitled, "Laws, Standards and Instructions for the Maintenance, Construction and Operation of Steam Locomotives." Of these regulations the present Emergency Board may take judicial notice if official determination of the instant issue is contemplated, the Carrier urged. Speaking for the Board, the Chairman concluded that the matter should rest without further inquiry or consideration (Tr. 4942-4946; Ex. 113).

III

Discussion and Recommendation

Part (a) of the Request reads in exact language as does Rule 129 as presented by the United States Regulations for Steam and Other Than Steam Locomotives, as furnished by the Interstate Commerce Commission, Bureau of Locomotive Inspection; also Safety Appliance Standards for Locomotives as fixed by Order of the Commission dated March 13, 1911 (Ex. 113).

Rule 132 of the same Order reads in substance as does part (c) of the Request (Ex. 113).

Part (b) of the Request asks for a service whereby the light from the headlights may be diminished in yards and at stations or when meeting trains.

The above Order of the Interstate Commerce Commission requires a light on the rear of the same specifications as is required on the front if the engine is regularly required to run backward for any portion of the trip (except to pick up a detached portion of its train) or in making terminal movements (Ex. 113).

The Board is of the opion that there is no need to place in a contract an obligation which the Interstate Commerce Commission imposes on the Carrier.

RECOMMENDATION:

The Board recommends that the Request as embodied in Item 11 of Case A-1371 be not adopted.

CASE A-1371—ITEM 12

I

ORGANIZATION'S REQUEST

The Organization's instant request reads:

> No person defective in hearing, sight or color perception, or who cannot work in both road and yard service as an engineer, shall be promoted or hired as a locomotive engineer.
>
> If engineers are required to lose time to take physical re-examinations they will be paid for time lost.
>
> In re-examining engineers as to visual power and color perception, tests will be made as may be prescribed by the Hospital Department. If an engineer fails on such test, he will be accepted if he passes the visual examination that is commonly known as the "Field Test"; said tests not to exceed a distance of 2000 feet for semaphore, 1500 feet for flags, and 1200 feet for hand signals; colors to be flags and signals in actual use on the Southern Pacific. Where an engineer uses glasses, he will be allowed to wear same in passing all tests and should be allowed the privilege of having the General or Local Chairman, whomever he may choose, to be present when the test is made.
>
> It is to be understood that re-examinations are to be taken without loss of time, when practicable. (Ex. "B", 6-7.)

II

THE ISSUES

The request consists of three fundamental proposals, each of which contains the elements of separate issues. The first proposal, contained in the first paragraph of the Request, raises the important question as to whether the privilege of promotion to the position of locomotive engineer shall be expressly denied to all persons having defective hearing, sight or color perception, or who cannot work in both road and yard service. Contained within this basic question is the ancillary inquiry whether acceptance of the proposal would necessarily involve obvious discrimination against members of the firemen's craft which has a natural interest in the untrammelled privilege of advancement to the status of engineer, as well as against outside engineers who may seek employment

with the Carrier. Engineers who lose the sight of one eye in the service of the Carrier are not affected by the present request, it will be noted (Tr. 5011, 5014, 5028, 5032, 5054).

The second proposal, contained in the second paragraph, raises the question as to whether engineers who, in the interest of their own welfare, and the safety of themselves and the patrons of the Company's service, are required to submit to a physical re-examination shall, if they lose time in doing so be paid for time lost.

The third proposal, embodied in the third paragraph, presents the issue as to whether there shall be included in the Engineers' Agreement specifications for tests employed to re-examine the fitness of engineers to perform their prescribed duties properly; the conditions under which such tests shall be made, that is, whether in case of failure of the test prescribed by the Hospital Department an engineer shall be privileged to take the so-called "Field Test" whose requirements are defined by the Organization; the requirement that the engineer may have an officer of the B. L. E. present at such re-examination and by implication none other.

III

POSITION OF THE PARTIES

1. *Organization's Contentions:*

The Organization contends that the proposals in the request are sound, involve no unfair discrimination against the members of any other craft interested in promotional opportunities, represent no new departure in the nature of joint agreements, are designed to assure fairness in the re-examination, have the constructive purpose of safeguarding areas of restrictive service, and conform to established practice and regulations (Tr. 5398-5404).

In support of these contentions the Organization contends that it is a sound operating policy to exclude from promotion to the craft of engineering persons who have met with the misfortune of losing one eye or otherwise becoming physically disabled; that it is only proper that such persons be taken care of within their own crafts (Tr. 5054-5055); that firemen who have lost the sight of one eye or otherwise have become physically disqualified for engineering service should be taken care of in firing service (Tr. 5055-5064); that until recently it has been the practice of the Company not to promote one-eyed firemen to engineers, as is evidenced, it is claimed, in the case of C. R. Tussinger, who qualified in 1923 but later lost the sight of one eye and was not promoted until 1941 (a period of 18 years) (Tr. 5056; Ex. "GG", 3). In this connection it is essential to remember, declares the Organization, that since

1918 a person has been required to qualify for both road and yard service in the craft of engineer (Tr. 5067-5068). Important in this situation also is the fact that a road engineer who is disabled can still be used in the restricted service of yards or branch lines (Tr. 5063-5065).

The B. L. E. contends that Mr. Donnatin's letter dated February 1st, 1940, addressed to the Firemen's Organization, which in essence safeguards a fireman's privilege of promotion to the craft of engineer, despite physical disability is a direct violation of the Engineer's Agreement, despite the contrary view of the First Division, National Railroad Adjustment Board (Tr. 5057-5059; Ex. "GG", 3).

The Organization insists that re-examinations are always held at the request of the Carrier, and that consequently the engineer should be paid for the time lost in taking such examinations (Tr. 5097-5098); it does not here question the right of the Company to order engineers to appear for physical re-examinations, but it does question the Carrier's right to deprive an engineer of earnings under such circumstances; that the Carrier has often paid engineers' claims for time lost because of physical re-examination when such engineers were declared physically fit, but has declined to compensate for time lost when the Company physician orders an extended rest (Tr. 5098-5099).

With regard to the substitution of the so-called "Field Test" in cases where engineers fail the physical examination given by the Hospital Department, the Organization contends this is an established practice on a number of railroads in the United States, notably the Missouri Pacific, the Chicago and Northwestern, and the New York Central, which provide for such a test in their respective agreements covering engineers (Tr. 5103-5105, 5161; Ex. "GG", 1); and that even the Southern Pacific has made use of field tests, and the wisdom and practicability of them has been recognized by railway leaders for forty years (Tr. 5106-5107; Ex. "GG", 2).

The Organization calls attention to the fact that the presence of the General Chairman or the Local Chairman may be asked for only at the "Field Tests" and not at Hospital Tests; that the purpose is merely to assure fair decisions, consequently the B. L. E. would have no objection to the choice of the General Chairman or the Local Chairman of the B. L. F. & E. if an engineer so desires (Tr. 5112-5113); that there is nothing about the specific distances embraced within the Field Test it prescribes that is contrary to the spirit or letter of the requirements specified by the Interstate Commerce Commission and which does not come within the scope of such requirements (Tr. 5403-5045).

2. *Carrier's Contentions:*

The Carrier asserts that the first paragraph of the request is open to several objections. Its provisions concerning the physical bases of denial of promotion to the craft of engineer restricts the right of the management to determine the qualifications of its own employees, a right previously recognized by the Organization (Ex. 129; Tr. 5215-5216). A person with defective vision in one eye, adequate vision in the other, and possessing all other necessary qualifications for service as an engineer, can be efficiently employed in yard service or on a branch line. This fact, the Company asserts, is recognized by Article 32, Section 12 (c) of the Engineers' Agreement, under the provisions of which engineers who after promotion lose the sight of one eye may and do exercise seniority rights to hold positions in yard or branch-line service (Tr. 5217-5218).

The Carrier further states that the provisions of the first paragraph are also objectionable because its net effect is to set aside an agreement between the Company and the Firemen's Organization, dated February 1, 1940, which assures promotional privileges to the members of that craft (Tr. 5218-5220); that under Article 42, Southern Pacific Company (Pacific Lines) Firemen's Agreement, firemen may be examined for promotion to engineers and, if otherwise, qualified, may be promoted to and called for service as engineers (Tr. 5220; Ex. 102, 97-100); that even under the provisions of Section 12 (c), Article 32, of the Company's Pacific Lines Agreement with the Engineers' Organization, these promoted firemen with the loss of the sight of one eye may be called for restricted service—that is, yard service or on branch lines (Tr. 5220; Ex. "A", 103). The First Division of the National Railroad Adjustment Board, in Docket No. 15860, Award No. 9735, dated September 11, 1944, sustained the Company's claim that in promoting two firemen, C. R. Tussinger and Edward Atkinson under the terms of Firemen's Agreement it did not violate the provisions of its Engineers' Agreement (Tr. 5220-5222; Ex. 130). The Carrier insists, therefore, that the proposal of the Engineers is an attempt both to set aside an existing agreement with the Firemen's Organization and overrule a recent Award of the Ajustment Board, and would be prejudicial in that it would deny to firemen the privileges now accorded under Article 32, Section 12 (c), Engineers' Agreement, to men whose physical impairments occur even after promotion. The Carrier adds that it is contrary to its estiblished policy to discriminate against any of its employees equally qualified for advancement with others of its personnel (Tr. 5223).

Concerning the proposal contained in the second paragraph of the Organization's request, the Carrier contends that re-examinations are an essential safety measure, designed to remove or minimize all hazards to life and property (Tr. 5223-5224); that the Company's policy is pay the men for whatever time they lose because of these examinations, provided they are taken in response to its instructions and no disqualifying physical defects are revealed by them; that if the examination reveals that the man should not be in service, then he is not compensated because he actually has lost no time, having been in service when he should not have been, since to require payment in the latter case would be unreasonable (Tr. 5224-5225).

The Company believes that the third part of the first sentence of the Engineers' request sets forth present Company policy, but the balance of its provisions constitute a dispossession of the Company's responsibility and function in discharging its public obligation to operate with the maximum safety; that the Carrier must be absolutely free to modify the requirements and standards with regard to visual power and color perception whenever changed conditions dictate, hence it must not be hampered by a Rule in the Engineer's Schedule (Tr. 5225-5226). The Company points out that its present policy provides for a Field Test when examination indicates an engineer is defective in color perception, but it does not give such tests to engineers revealed by competent oculists to have visual power below the minimum requirements determined by the Company's Surgeon (Tr. 5226); that even if a Field Test for visual power were adopted, the distances proposed by the Organization as indicating satisfactory or safe vision for locomotive engineers are totally inadequate in the light of present operations (Tr. 5226-5227).

In brief, declares the Carrier, the request in its entirety is designed to accomplish two purposes, namely: (1) to impose on certain employees restrictions which are not imposed on others, although there is no distinction to support the differentiation; and (2) to lower the standards of qualification for engineers, regardless of safety considerations, and so handicap the Company in its efforts to maintain proper standards. It is an inescapable conclusion, the Carrier urges, that the first of these purposes is essentially unfair, and the second exceedingly unsafe.

3. Position of the Brotherhood of
Locomotive Firemen and Enginemen:

The Brotherhood of Locomotive Firemen and Enginemen interceded in the instant case in behalf of certain members of its craft who, it is alleged, would suffer irreparable harm were the proposals of the B. L. E. accepted. The Firemen's Organization insists that in the instant request the B. L. E. is seeking privileges for engineers, who already are engineers, which it would deny to firemen, all of whom are potential engineers. In the first place, the Firemen's Organization contends, the request of the Engineers is for a Rule that would forbid the promotion of men not capable of engineer service in all its grades and branches. The Firemen's Organization declares that this proposal is objectionable to its members, because this Organization's contract with the Carrier allows, under certain circumstances, the promotion of men having certain physical defects; that the engineers are thus attempting to reserve for their own members who lose an eye in the Carrier's service the right to continue as engineers in restricted service, and deny the same privilege to firemen who suffer the same kind of misfortune (Tr. 4954); that the proposed Rule is palpably unreasonable and unfair, because its acceptance would thus affect adversely the rights and privileges of firemen (Tr. 4955).

There is more in the instant request than meets the eye, insists the B. L. F. & E., because, stripped of its covering, the proposal is designed to place in the hands of the B. L. E. exclusive jurisdiction over matters which are of vital concern to the firemen; thus, existing contractual arrangements and the right of men to be represented by their own Organization are infringed (Tr. 4992-4993, 4995-4997).

Important in the instant matter, insists the Firemen's Organization, is the fact that under the Chicago Joint Agreement (1913-1927) the two Organizations here involved proceeded on the basis that each organization had the right to represent its own individual members, but subsequent to the abrogation by the B. L. E. of that agreement in 1927 jurisdictional controversy frequently has arisen; that under Article 51, Section 1, of the Carrier's Agreement with the B. L. F. & E. the Firemen's Organization has the right to represent its members who are engineers (Carrier's Ex. 102, 109); that the fact of overlapping membership in the two Organizations explains the significance of this representation (Tr. 4958); that the B. L. F. & E. has between 1200 and 1300 members who are engineers on the Southern Pacific (Pacific Lines) (Tr. 5309).

The B. L. F. & E. insists that in the present request the B. L. E. obviously is attempting to write contracts for firemen and control the hiring rules for all engineers (Tr. 5355); that the Firemen's Organization recognizes the Engineers' Agreement necessarily covers rates of pay, rules and working conditions, and that it handles engineer's cases under recognized interpretations of the Engineers' Rules (Tr. 5356).

In brief, then, the Firemen's Organization contends that the Engineers' request should be denied because it is obviously unfair to firemen, discriminates against said firemen in favor of engineers with identical physical defects, violates the basic principles and established practice of representation provided in existing contract, transfers to that Organization jurisdiction over hiring and promotion hitherto considered to be within the jurisdiction of the Carrier, and restricts and infringes representation (Tr. 5356-5428; Memorandum of B. L. F. & E. in re Case No. A-1371, Items 12, 13, 17 and 18 before present Emergency Board, 9-15).

IV

Discussion and Recommendation

Prefatory to an analysis of this and some of the following cases emphatic note should be taken of the primary and paramount duty of the Carrier to operate its road safely. This responsibility is even greater than moving traffic. It cannot be delegated. The Carrier cannot take refuge behind any rule and plead that it was compelled to make the same. Where the Carrier contracts with any organization to do something or not to do something which would materially tend to affect adversely the safe operation of its road, it is thought that the courts would declare such provision void as against public policy.

In the light of the responsibility of the Carrier for the safe running of its trains, a duty which cannot be delegated nor evaded, any tribunal—and that includes this Board—would move with great caution in recommending a rule which subtracted in any way from the managerial prerogative and duty of safe operation. Even if we thought that a proposed rule would not materially interfere with that duty, we would give great weight to the judgment of the Carrier that it did. We would not put ourselves in the position where if an accident occurred the Carrier could possibly point to the fact that it was due to an omission or commission required by a compliance with a rule that this Board had recommended.

With these remarks in the foreground, we take up discussion of the proposed rule.

The first part would seem to be in the interests of safety because it bars promotion or hiring as an engineer any person defective in hearing, sight or color perception. But viewed in the light of Article 32, Section 12 (c) which makes provision for the continued employment of engineers who, after obtaining dates as engineers, are physically disabled on account of loss of sight of one eye, the proposal is designed to limit the persons who may become engineers by reason of defective hearing, sight or color perception—how extensive the defects must be is not vouchsafed us—and not to guard the Carrier from using engineers with defective sight. This is further borne out by a glance at the third paragraph of the entire proposal where the rule imports into the "Field Test" specified distances; thus again definitely not looking to safety, but to the preservation of jobs, even for engineers with some defect in sight. In short, the first paragraph would not permit the promotion or hiring of an engineer with defective sight, thus under Section 12 (c) of Article 32, giving engineers who had lost their sight after becoming engineers a monopoly in the restricted service of yard and branch lines, and at the same time would require the retention of engineers who perhaps had even more defective sight than some firemen who applied for promotion, or than applicants from other roads who applied for employment. It is quite conclusive, therefore, that the proposed rule is not primarily, or at all, in the interests of safety, but in the interests of limiting the restricted work to those whose defects accrued while they were engineers.

And if it were strictly in the interests of safety we would hesitate to define in a rule the qualifications of applicants to enter the engineering craft. We think that is peculiarly the prerogative of the Management. Having the responsibility for safe running of the road, it must retain the right to specify qualifications, mental, moral and physical. Therefore, we would at all events be hesitant in recommending any proposal specifying physical or other qualifications. This does not mean that the Carrier could not voluntarily agree with any craft as to qualifications as long as such agreement did not cut down on qualifications which were palpably necessary for safety. But we would hesitate to recommend that a rule specifying qualifications—maximum or minimum—be adopted when the Carrier objected.

This is one of the four items in Case A-1371 in respect to which the Brotherhood of Locomotive Firemen and Enginemen sought intervention. We denied intervention as a party, but in the scope of our functions and duties to investigate and report we permitted representatives of the B. L. F. & E. to present their objections; they claiming that the proposed rule was against the interests of members of their craft. They placed witnesses on the stand and examined them and presented arguments at length.

All firemen are inchoate engineers in that they have potentialities for becoming engineers. All locomotive engineers have previously been firemen because they must come up through firing.

So the accomplishment of the technique of firing is part of an engineer's training and each engineer has included in this vocation as engineer the skills of firing. In addition to this relationship of predecessor and successor as to vocations, many of the engineers retain membership in the firemen's organization and by the Constitution of the Engineers' Organization any fireman, even though he has not obtained his date as an engineer, may join the Engineers' Organization. This overlapping of membership is illustrated by the fact that the B. L. F. and E. has between 1200 and 1300 members who are engineers on the Southern Pacific (Pacific Lines), and that some 38% of the total membership hold dates as locomotive engineers (Tr. 5309). The Engineers plead that they should take care of their own "one-eyed" engineers and that the firemen should take care of their "one-eyed" firemen.

When a firemen is promoted he takes the junior position on the engineer's working list. Any force reduction sends engineers down to firing and consequently junior firemen are forced into unemployment or on less desirable firing runs. The firemen must first take care of the demoted engineers. In depressions this causes firemen in the lower brackets of seniority to be laid off in large numbers. In March of 1933, for instance, on the Sacramento Division, all engine jobs, both engineer and firemen, were held by 145 senior engineers, while 167 junior engineers and *all* firemen, 175 in number were out of employment (Tr. 5320-5321).

By Article 11 of the Chicago Joint Agreement, the Firemen accorded to the Engineers the demotion privilege. By Article 10 the Agreement provided that firemen, when qualified shall be promoted in accordance with their firemen's seniority to positions as engineers in accordance with certain rules. While the Chicago Joint Agreement was by the Engineers' Organization terminated in 1927, provisions stemming from that Agreement appear in both the Engineers' and Firemen's schedules with the Southern Pacific Company. It would be manifestly unfair if the Firemen had confirmed to the Engineers' demotion rights in return for the right of the Firemen to bargain for promotion rights for any abudgement to be made in those promotion rights bargained for by the Firemen with the Company in pursuance of the Chicago Joint Agreement. Even aside from any consideration of the Chicago Joint Agreement it would seem only fair that since the Firemen must first take care of demoted Engineers to the detriment of members of their own craft, the Engineers should not attempt to prevent the promotion of one of the firemen's craft who suffered the loss of the sight of one eye before he got his engineer's date, even though it may increase the competition among engineers in and for the restricted service.

It has been pointed out that the Firemen have gone beyond the terms of their contract obligations in protecting engineers with physical disabilities. A man removed from service as engineer because of physical defects has no right to displace a fireman because that right does not exist if junior engineers are running engines (Ex. 102, Firemen's Schedule, Article 42, Section 10, p. 99; Ex. "A", Article 32, Sections 5 (b), 93). The Firemen, it is claimed, have consistently made places for such men (Tr. 5533; Board's Ex. 1).

The Engineers contended that a promoted one-eyed fireman would gain an advantage over senior engineers. This comes about because under Article 32, Section 12 (c) of the Engineers' Agreement, a one-eyed engineer whose seniority will not hold a job for him in branch service "will be placed in yard service and be paid freight rates". Thus a one-eyed promoted fireman not able to exercise seniority in branch service would be placed in yard service at a higher rate than some engineers his senior in yard service who not having lost an eye would be paid at the lower yard rate. But if it is true, as testified, that freight rates are paid only if the engineer loses an eye in *engineer's* service a one-eyed firemen would not get the higher freight rate. At all events the disparity in rates is slight as compared to the inequities which would be visited on the Firemen if this proposed rule were adopted. The higher rate was to equalize all the one-eyed men whether in yard or branch service and may have contained a compensatory feature for the loss of an eye.

Another reason for denying the first part of the proposed rule was intimated in the beginning of this discussion. The right of the Carrier to retain full right reasonably to control the qualifications of its employees. There is a material difference, seemingly not too well sensed by either the Firemen or Engineers, between rules relating to promotions or hiring and rules dealing with qualifications of those who are to perform the very responsible work of operating engines as a condition of promotion or hiring. We do not mean to say that the Carrier could be arbitrary in establishing qualifications for the transition over the line from fireman to engineer.

A reading of Article 42, Firemen's Agreement, nowhere provides what qualifications a fireman must have to enter the ranks of the engineers. He will be given a certificate of qualification when he passes the required examination and when qualified shall be promoted as road engineer from the date of his first service on any class of locomotive. At that point he obtains seniority as an engineer and retains his seniority as a fireman.

Article 32, Section 5 of the Engineers' Agreement deals with "Hiring and Promotion", but it will be noted that practically all of Section 5 deals with many of the same matters contained in Article 42 of the Firemen's Agreement, but omitting the parts of Article 42 which deal with the actual machinery for qualifying for promotion which naturally concerns the firemen.

This is significant. The provisions in the Engineers' Agreement dealing with "Hiring and Promotion" do not deal with the examinations and steps necessary to become engineers. Those are matters which concern those who must make the transition, the firemen. All those provisions dealing with the proportion of *hired* to *promoted* engineers, date of seniority as an engineer, posting of seniority rank so as to bind everyone after a certain period, junior fireman or engineer hired as proxy for senior eligible firemen or engineers to be hired, qualified fireman establishing date when engineer to be hired is not available and vice versa, contained in Section 5, Article 32, Engineers' Agreement, relate, not to the machinery for qualifying, but to the method of promotion after qualification. They are contained in both Agreements because the firemen who qualify must know how they get their date as an engineer, and since at that time they are inducted into the engineers' craft, those provisions must also be part of the Engineers' Agreement. The scheme of things is fairly clear. We do not think the Carrier should be required to agree as to qualifications necessary for the entry to the engineers' craft, either with the Engineers or the Firemen, and we think the matter of the steps necessary to establish qualification according to the standards set by the Carrier concerns the firemen and not the engineers.

It results from the above that we cannot recommend the first part of the proposed rule, nor can we recommend that those engineers who have not passed the physical re-examination should be paid for time lost in taking it. The Carrier pays for time lost when the engineer passes his physical examination. But when he is found not physically fit to work he is apprised of the fact that he should not have worked. The time he has worked under such condition is "velvet" to him.

Nor can we recommend that certain specifications be included in the "Field Test" given by the Carrier for reasons amply set out at the threshold of this discussion. Unless the Carrier is quite arbitrary in fixing the distances at which semaphores, flags and hand signals must be discernible by the one undergoing re-examination, the Carrier, being charged with the safe operation of its trains, should not be trammelled in its judgment as to what visual ability engineers should have.

We see no objection to any engineer undergoing a re-examination having present a friend of his own choosing or the General or Local Chairman of either the Engineers' or Firemen's Organizations, any of which he may choose. If the Brotherhood desires a new rule as to that we do not think the Carrier should object.

RECOMMENDATION:

The Board recommends that the entire proposed rule set forth in Item 12 of Case A-1371 be not adopted.

CASE A-1371—ITEM 13

I

ORGANIZATION'S REQUEST

The request reads:

> When an engineer has been removed from his position on account of his physical condition and the General Chairman, Brotherhood of Locomotive Engineers, desires the question of his physical fitness to be finally decided before he is permanently removed from his position, the case will be handled in the following manner:
>
> The General Chairman will bring the case to the attention of the General Manager. The Management and the General Chairman will each select a doctor to represent them, each notifying the other of the name and address of the doctor selected. The two doctors thus selected will confer and appoint a third doctor.
>
> Such Board of Doctors will then fix a time and place for the employee to meet them. After completion of the examination they will make a full report in duplicate, one copy each to be sent the General Manager and the General Chairman.
>
> The decision of the Board of Doctors on the physical fitness of the employee to continue in his regular occupation shall be final, but this does not mean that a change in physical condition will preclude a re-examination at a later time.
>
> The doctors selected for such Board shall be specialists in the disease from which the employee is alleged to be suffering, and they shall be located at a convenient point so that it will only be necessary for the employee to travel a minimum distance.
>
> The Management and the Organization will each defray the expenses of their respective appointee. At the time their report is made, a bill for the fee and traveling expenses, if there be any, of the third appointee should be made in duplicate, one copy to be sent to the General Manager and one copy to the General Chairman. The Management and the Organization will each pay one-half of the fee and traveling expenses of the third appointee.

II

THE ISSUE

The proposal involves the basic question as to whether the present method of control and administration of physical fitness examinations designed to test the ability of engineers to continue in positions with efficiency and safety, hitherto and at present exclusively within the jurisdiction of the Company, shall henceforth be subject to appeal, said appeal to be subject to the joint control and administration by the Carrier and the Brotherhood of Locomotive Engineers, functioning through the General Manager of the Company, the General Chairman of the Brotherhood of Locomotive Engineers, and a tripartite Board of Medical Examiners.

III

POSITION OF THE PARTIES

1. *Arguments of the B. L. E.:*

There are occasions, the Organization contends, when it is desirable to provide for a review of the Company doctor's decision in examinations, the outcome of which involve the removal of engineers from service (Tr. 5451). Only by a joint check upon the results of physical examinations and ultimate determination by an impartial Board of Doctors can abuses be precluded, the Engineers affirm.

The presentation of the request is a direct consequence of the Carrier's refusal to follow a practice in use on other railroads, which long since have provided for Boards of Physicians for the purpose herein defined (Tr. 5452, 5458; Ex. "HH").

Of special significance in this connection, urges the Organization, is the fact that the First Division, National Railroad Adjustment Board, in a series of Awards, notably Awards 4674, 4845, 4846, and 5421, has sustained the necessity and validity of independent medical judgment in such instances as come within the purview of the instant request (Tr. 5453-5457).

The concrete need for such as is sought here is pressing, the Organization claims, since evidence reveals that 66 engineers were taken out of service for physical examination or re-examination during the first three months of the curent year (1945), some of whom are completely dissatisfied with the Company doctor's decision. A Medical Board of Review would obviate the dissatisfaction that arises in such cases, the Organization asserts (Tr. 5464). The Organization contends that this is the only procedure that will avoid the present unjust situation in which no individual engineer on the Southern Pacific Railroad has any right or privilege of a medical review when discharged on medical grounds, because presently the recommendation of the Company's Hospital Department is final, except by special dispensation of the Management (Tr. 5621).

2. *Carrier's Arguments:*

The Carrier insists that the instant proposal is not necessary in view of the Company's present practice, which is always to order an examination when an engineer's physical or mental ability to perform his duties safely and propely is questioned; to continue said engineer in regular service, if found physically and mentally fit, or, if physically disqualified to continue as an engineer, to place him in whatever restricted service he can perform (Tr. 5489-5490).

The proposed Rule is alleged to be further objectionable because it allocates to the General Chairman of the Brotherhood of Locomotive Engineers the authority and function of questioning the decisions of the Company's Hospital Department physicians, and of participating in the selection of a Reviewing Board, regardless of the union affiliation of the employee involved. It should be noted here, the Carrier contends, that the Brotherhood of Locomotive Firemen and Enginemen has already protested against acceptance of the instant proposal as discriminatory. The Carrier insists that the proposal is in conflict with the Railway Labor Act, which accords to each employee the right to choose his representation and union affiliation (Tr. 5487, 5490, 5491; Exs. 132, 134, 136).

The Carrier contends further that the procedure proposed in the request will consume unnecessarily the time of physicians so much more urgently needed elsewhere in the present critical period of national life; that the procedure is, moreover, unwieldly and will serve no purpose not already served by the Company's Hospital Department's methods of handling cases. The Carrier states that its present medical staff is thoroughly competent, ethical and fair, as is evidenced in the almost complete absence of complaints by the B. L. E. during the many years of existence of the present methods (Tr. 5491-5498).

In brief, declares the Carrier, the instant request is unacceptable because it vests in the Brotherhood of Locomotive Engineers exclusive representation of individual engineers, regardless of their union affiliation; necessarily involves unjustifiable wastage of medical skill and services at a time when the nation has a serious shortage of physicians; seriously interferes with the Carrier's present satisfactory methods of operation; and is totally unnecessary in view of the almost complete absence of dissatisfaction with the Company's present policy and procedure (Tr. 5498-5499).

3. Position of the Brotherhood of Locomotive Firemen and Enginemen:

The Brotherhood of Locomotive Firemen and Enginemen, as a friend of the Board, presented testimony and argument in the instant dispute allegedly to safeguard the interests of the members of the Firemen's craft and the integrity of its own responsibilities and functions. The Firemen's Brotherhood takes the position that in the present proposal the Brotherhood of Locomotive Engineers seeks a right it does not now possess of participating in the review of medical decisions involving the separation of an engineer from regular service and to arrogate to itself the right of exclusive representation in this matter.

It is further contended by the Firemen's Brotherhood that the existence of a right created by a craft contract cannot be conditioned upon the good wishes or approval of an individual or committee, (B. L. F. & E. Memorandum in re Case No. A-1371, Items 12, 13, 17, 18, p. 16).

The B. L. F. & E. insists that in giving to the B. L. E. exclusive jurisdiction, the proposed Rule violates the spirit and letter of the Railway Labor Act with regard to the free choice of a representative, is in irreconcilable conflict with Section 1 of Article 51 of the Firemen's Schedule, which vests in the B. L. F. & E. the right to represent its members; involves illegal discrimination against a minority of craftsmen; and in its design of exclusive representation by the B. L. E. constitutes a movement for a closed shop. In relation to all these matters, the Firemen assert, it must be remembered that from 1200 to 1300 out of 3700 engineers on the Southern Pacific are members of the B. L. F. & E. (Tr. 5519-5523; 5535-5537; 5576-5587; B. L. F. & E. Memorandum in re Case A-1371, Items 12, 13, 17, 18, pp. 17-34; Ex. 102, p. 109).

IV

DISCUSSION AND RECOMMENDATION

The Board has concluded that the principle set forth in the proposed rule which seeks to give an engineer removed from his position on account of the Company doctor's pronouncement of physicial unfitness, an appeal to a neutral doctor should be adopted. An engineer removed because of a doctor's finding of physical unfitness has lost the opportunity to pursue a vocation for which he has been trained over years of experience. His right not to be removed unless he is physically unfit is a very valuable one. It should not ultimately be left solely to depend on the pronouncement of the Company or its medical representative. We, therefore, subscribe to the principle of appeal involved in the request.

We do not subscribe to the feature contained in the proposed rule which makes such appeal depend on the desire of the General Chairman, Brotherhood of Locomotive Engineers. It is apparent on the face that this gives such officer a power to request or refrain from requesting an appeal which might be used to discriminate against non-members of the Engineers' Organization, or even against members of the Firemen's Organization. It gains nothing to say that such power would not be so used or that the present General Chairman would not abuse the power. It is not a question of personality, but a question of power. As the years roll by there will be other General Chairmen. Such power from which the proposed rule gives no appeal might be used in personal discrimination.

The Brotherhood of Locomotive Firemen and Enginemen made vigorous protest against the placing of such power in the hands of the General Chairman, Brotherhood of Locomotive Engineers, (1) on the ground that it was in conflict with Section 1, Article 51, of the current Firemen's Agreement, reading as follows:

> The right of any engineer, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded.

(2) That it is in contravention of the principles laid down in the Amended Railway Labor Act and its predecessor Acts, which are recognized in Section 1, Article 51, of the Firemen's Agreement, and paragraph 3 of Section 22, Article 32, Engineers' Agreement.

Section 3, First (i) U. S. C. 45:153 (Amended Railway Labor Act of June 21, 1934) provides:

> The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties, or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

Section 3, First (j) U. S. C. 45:153, provides:

> Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

We think the only reasonable interpretation to be given these sections is that an employee may choose such representative as he may desire to file and progress his claim from the beginning. This interpretation was placed on the above provisions of the Act by the Emergency Board of 1937, (G. S. Arnold, Chairman), said Board holding as follows:

> It is true that the representatives of the majority represent the whole craft or class in the making an agreement for the benefit of all, but it is equally true that nothing in the Act denies the right to any employee, or group of employees, to enforce, through representatives of his or their own choosing, his or their rights under any such agreement. The whole spirit and intention of the Act is contrary to the use of any coercion or influence against the exercise of an individual's liberty in his choice of representatives in protecting his individual rights secured by law or contract.

"In its opinion the United States Circuit Court of Appeals, Tenth Circuit, in the case of General Committee of Adjustment of Brotherhood of Locomotive Engineers for Pacific Lines of Southern Pacific Company vs. Southern Pacific Co., et al 132F (2d) 194, Judge Denman speaking, stated:

> The Railway Labor Act does not make the Engineers' Committee the exclusive representative of the individual engineer in his disputes with the railway arising from the individual's contract of employment, hence contract between Firemen's Committee and railway that engineer belonging to Firemen's Brotherhood may have Firemen's Committee represent him in handling his grievances was valid. Railway Labor Act of 1926, 2, Fourth, as amended June 21, 1934, 45 U. S. C. A. 152, Fourth.

True, the Supreme Court reversed this case on grounds other than the merits, but the considered personal opinion of an able judge is persuasive. But see Elgin Joliet Eastern Railway Company vs. Burley et al decided June 11, 1945 by the Supreme Court of the United States.

Since the request in this case was made, to-wit, on November 20, 1944, the chief executives of the two Brotherhoods i. e., A. Johnston, Grand Chief Engineer of the Brotherhood of Locomotive Engineers, and D. B. Robertson, President of the Brotherhood of Locomotive Firemen and Enginemen, signed a memorandum reading in identical words (except that "Hostler Helper" was omitted) with Section 1 of Article 51, Firemen's Agreement. There would seem no question, therefore, that both Organizations now recognize the principle that any engineer with a grievance may have the Firemen's Organization represent him if he is a member of the Firemen's Organization. The words "his Organization" are construed to mean either of the Organizations to which he belongs, which meaning we think is the natural one.

While the representation rule as to grievances would generally apply to claims arising by virtue of an alleged violation, there is no reason to give it a narrow construction. If an engineer is declared physically unfit by the Company's physician and he believes unjustly so, he has a grievance. To freeze in a rule a provision that his right of appeal should depend on the "desire" of a third party and thus give that third party absolute power to determine whether he shall have an appeal seems to go much further than any rule which would specify a particular representative. In fact, it might well be contended that it was not procedural, but substantive; that is a condition for the right to come into being. If it is of that nature it is even more obnoxious to the dictates of fairness and equity. To make a right depend on the "desire" or consent of an outside party, perhaps one who may be unfriendly to the interests of the party in whose favor the right is sought, is anomalous to say the least. To give the power to say whether the right shall be exercised or come into being by one who may occupy an official position in a competitive, if not a rival organization is equally as objectionable.

The choice of whether the disqualified engineer desires to take an appeal to a Doctor's Board should rest with that engineer, and he should have the right to choose his representative. A recommendation of the proposed rule as it is drawn would put the Carrier in the dilemma of determining whether it would accept the recommendation, and in the words of the Emergency Board of 1937 thus "put serious handicaps upon the power of the Brotherhood of Locomotive Firemen and Engineman to protect promptly and adequately the rights of its engineer members, and to that extent make membership in the Brotherhood of Locomotive Engineers more desirable," or reject it and run the risk of the consequences which may follow rejection. It is not without tenability that if this Board concurred in the rule as proposed it might be making a recommendation which, if adpoted by the Carrier, would tend indirectly to "influence employees in an effort to induce them to join or remain, or not to join or remain members of a labor organization" contrary to the spirit, if not the letter, of Section 2, Fourth, of the Railway Labor Act.

To that end we have fashioned a rule which we think will give a right of appeal and thus accomplish what is meritorious about the request. We include this as an affirmative part of our recommendation.

RECOMMENDATION:

The Board recommends that the proposed Rule as contained in

Item 13 of Case A-1371 be not adopted, but that in its stead the following recommended rule be adopted:

When an engineer has been removed from his position on account of his physical condition and he desires the question of his physical fitness to be finally decided before he is permanently removed from his position, the case will be handled in the following manner:

The engineer or his designated representative will bring the case to the attention of the General Manager. The Management and the engineer, or his designated representative, will each select a doctor to represent them, each notifying the other of the name and address of the doctor selected. The two doctors thus selected will confer and appoint a third doctor.

Such Board of Doctors will then fix a time and place for the employee to meet them. After completion of the examination they will make a full report in duplicate, one copy each to be sent the General Manager and the engineer.

The decision of the Board of Doctors on the physical fitness of the employee to continue in his regular occupation shall be final, but this does not mean that a change in physical condition will preclude a re-examination at a later time.

The doctors selected for such Board shall be specialists in the disease from which the employee is alleged to be suffering.

The Management and the engineer will each defray the expenses of their respective appointee. At the time their report is made, a bill for the fee and traveling expenses, if there be any, of the third appointee should be made in duplicate, one copy to be sent to the General Manager and one copy to the engineer. The Management and the engineer will each pay one-half of the fee and traveling expenses of the third appointee.

CASE A-1371—ITEM 14

I

ORGANIZATION'S REQUEST

The request reads as follows:

MINIMUM DAILY GUARANTEE
ALL CLASSES OF ROAD AND
YARD SERVICE

In all classes of road and yard service the earnings for mileage, days, overtime, or other rules applicable, for each day service is performed, shall be not less than $10.75 for engineers. (Ex. "B", 8.)

The request is for an amendment to Section 4 (a), Article 1, Engineers' Agreement, which reads in part as follows:

MINIMUM DAILY GUARANTEE

Section 4 (a). In all passenger service, the earnings from mileage, overtime or other rules applicable, for each day service is performed, shall be not less than $9.45 for engineers.

In applying the $9.45 minimum for engineers in passenger service, it is intended that on assignments where the men run so as to make only the equivalent of a single trip in one direction each day, they shall be paid the guaranteed minimum for each single trip.

The Organization adds the following:

NOTE—At the time notice was served on the Carrier the rate in the above rule was $8.66 and increased 72 cents as the result of a general increase effective December 27, 1943, and increased 7 cents effective April 1, 1944, as the result of the Diesel electric engine settlement, western territory. (Ex. "B", 8-9; Ex. "A", 5-6.)

II

THE ISSUES

Two basic inquiries are involved in the central issues of the instant proposal: (1) Shall there be established a guaranteed minimum wage not only for passenger service engineers, as is currently provided, but for engineers in road and yard service, that is for *all* engineers, including those in shop yard service, for any day an engineer performs carrier service? (2) Can the requested additional increase in the guaranteed minimum rate of pay be justified under the national economic stabilization program?

It will be noted that since the current Engineers' Schedule was published the $8.66 guaranteed minimum has been increased to $9.45 because of advances in pay mutually agreed upon (Tr. 5936-5937).

III

POSITION OF THE PARTIES

1. *Organization's Arguments:*

In defense of the expanded scope of the guaranteed minimum rate of pay, the Organization insists that there is no logical reason for the payment of such a minimum in passenger service to the exclusion of freight service and yard service; that the fundamental purpose in seeking a daily minimum for engineers in all classes of road and yard service is a laudable one, namely, to increase the earning power of the low-paid men (Tr. 5937-5938); that promotion from fireman to engineer is not a promotion in the usually accepted sense. It contends that such promotion represents advancement to a higher grade of service with added responsibilities and with no corresponding increase in pay; that in some cases the daily basic rate for the engineer is lower than the daily basic rate for the fireman, because a fireman eligible for promotion is taken from the senior position of fireman and placed in junior position as engineer (Tr. 5938-5939); that compared with his earnings as a fireman in senior position a man's earnings as an engineer in junior position often show to disadvantage (Tr. 5940-5946).

The Organization asserts that the principal reason for the instant proposal is the defensible one of providing a floor for men in the low brackets in all classes of road and yard service, which is a principle of guaranteed minimum pay that has been recognized since 1919 for a short turn-around passenger service, and since 1924 in all passenger service (Tr. 5963-5964).

The Brotherhood points out that the additional wage costs involved in the instant proposal are relatively inconsequential, the requested guarantee being less than the present rates of pay in many passenger and freight runs or tours of duty, especially where preparatory time, terminal delay and overtime are included (Tr. 6011-6012); that, including payment for terminal time and overtime, there would be no guarantee to pay, if the engineer's earnings exceed $10.75 for a tour of duty (Tr. 6071). The Organization states that out of the approximately 1600 locomotives on the Southern Pacific's Lines 1325 admittedly would be affected by the requested guarantee, because of rate being controlled by weight on drivers, which means 275 locomotives would not be involved (Tr. 6078-6080); that even in the case of engines affected, very little overtime is needed to reach the requested guaranteed minimum figure (Tr. 6107).

With regard to the relation of the request to the stabilization program the Brotherhood advances several contentions, namely, that the Little Steel Formula is elastic and apparently somewhat outmoded, because pay increases have been made in excess of its 15 per cent provision (Tr. 6132-6135-6136); that the President of the United States in granting a 5 cents an hour increase in railway pay did not intend to preclude further wage advances for the duration, but sought merely to "freeze the question of expenses away from home and the overtime after 40 hours per week" (Tr. 6132-6133).

In considering the need for the requested guaranteed daily minimum, the Organization stresses the importance of the fact that when an engineer is called from his home to go to work at an outside point his cost of living automatically increases allegedly at least $100 per month (Tr. 6137-6138).

2. *Carrier's Arguments:*

The Carrier maintains there is no possible justification for the proposal to establish a minimum daily rate of pay for engineers in its service, because the net effect would be a substantial increase in many classes of service; that wage adjustments for engineers and all other classes of railway employees have only recently received the attention of Emergency Boards, the Stabilization Authority and even the President of the United States; that the wage increases previously referred to, including the sum of $1.48

between December 1, 1941 and December 27, 1943, plus further advances according to types of locomotives as of April 1, 1944, must be recognized (Tr. 6022-6023)

The Carrier insists that the wage increases that inevitably would follow acceptance of the proposal cannot conceivably be justified under the national stabilization program; that the abovementioned increase in engineers' wages generally stabilized the rates of pay for engineers on all railways in western part of the United States; that there are no sub-standard wages, inequities, or inequalities to correct. The Company points to its Exhibit 138 to show that substantial wage increases would result from approval of the Engineers' request; and asserts that under the proposal there would be an increase of $1.30 in the present $9.45 guaranteed minimum wage for engineers in passenger service; that there would be established an identical minimum for yard, freight and other service; that there would result increases up to 13.8 per cent in the basic daily payments for practically all locomotives used in valley passenger service, and up to 17.6 per cent for 1300 out of the about 1600 locomotives which may be used in freight service, yard service, or mountain passenger service; and about 14.5 per cent, or approximately $380,000 per year, increase in almost all daily payments in yard service (Tr. 6109-6110). The Carrier insists that these advances must be added to the over-all percentage increases since January 1941, which are: about 20 per cent in yard service; about 17 per cent in valley freight service; and about 19.6 per cent in passenger service. The increases already granted allegedly are substantially more in each of these categories than the 15 per cent allowable under the Little Steel Formula, to say nothing of the additional percentages contemplated in the instant request (Tr. 6110-6111). The Company contends that even if there is eliminated the 40-cent increase awarded by the President of the United States as of December 27, 1943, which was in lieu of claims for weekly overtime for hours of work in excess of 40 per week, and for away-from-home expenses, the increase in basic rates of pay granted since January 1, 1941, average about 14.4 per cent for passenger service, 13.6 per cent for valley freight service, and 14.9 per cent for yard service (Tr. 6111).

The Carrier contends, therefore, that the present proposal, if adopted, would result in a basic rate for yard service, which, exclusive of the December 27, 1943 Award, would average about 33 per cent greater than the basic rate in effect January 1, 1941; for passenger service the corresponding increase would be about 31 per cent; and for valley freight service, about 19.8 per cent (Tr. 6115).

The Carrier repeatedly emphasizes that the President's Award of 1943 carried with it the clear understanding that that stabilized the rates for these employees for the duration of the War and that the matter would not be re-opened or further pressed (Tr. 6125). Certainly, the Company asserts, there has been no showing by the Brotherhood that acceptance of the request is necessary to correct inequalities, remove substandard wage levels, or preserve any existing differentials; that, consequently, the proposal does not come within any exception to the wage stabilization policy of the Federal Government under which allowable increases must not exceed the point of 15 per cent above the level of wage rates as of January 1, 1941 (Tr. 6114-6115). If any inequality exists, it arises entirely out of the application of seniority rules and the opportunity of men to avail themselves of seniority rights rather than out of wage differentials, asserts the Carrier (Tr. 6126).

Finally, the Carrier insists that the proposal has elements of unfairness, that its language is so ambiguous as to constitute a fruitful source of disputes, and inevitably would have an unstabilizing effect on the general structure of railroad wages. The Carrier contends that the present request has been presented only to the Southern Pacific Company, hence would seem to be unreasonable; that its acceptance would cause an unwarranted wage increase for engineers; and that it would, if approved, occasion similar demands for wage increases on the part of all other classes of employees; and that it would create inter-plant and intra-plant inequities rather than allay them (Tr. 6030-6031).

IV

DISCUSSION AND RECOMMENDATION

The Engineers already have a present minimum-day guarantee of $9.45 for each day passenger service is performed. The principle which places a floor under daily earnings below which they cannot fall is a salutary one. If it is good in passenger service we do not see why it should not also be applicable to road freight and switching service.

The case of the engineers presents a peculiarly apt situation for the application of a floor. When a high seniority fireman is promoted to low seniority engineer he may and usually does suffer a decrease in earnings. He is required to take the examination and accept promotion. The promotion means that he has advanced to a higher grade of service, but at a cost, for a time, of decrease in earnings and oftimes with increased living costs.

Whether $10.75 asked for by the Organization is the appropriate figure we need not at this time determine because we think

we are powerless to grant this request. We are under obligation to grant no increases which would not be in accord with the government program designed to control inflation, generally known as the Stabilization Program. Section 202 of the Stabilization Extension Act of 1944 (Public Law 383-78 Congress) provides among other things that "Any Agency provided for by such Act (referring to the Amended Railway Labor Act) as a prerequisite to affecting or recommending a settlement of any such dispute, shall make a specific finding and certification that changes proposed by such settlement or recommended settlement, are consistent with such standards as may be then in effect, established by or pursuant to law, for the purpose of controlling inflationary tendencies." Section 202 of the Stabilization Extension Act of 1944 does not leave it to us to say whether we think any wage increases would be inflationary. It requires us to determine whether any of the proposed increases are consistent with such standards as "may be then in effect, established by or pursuant to law." One of these standards established or in pursuance of law is the so-called Little Steel Formula. "The Little Steel Formula stabilizes the general level of wages by placing a definite limitation upon the grant to groups of workers of general wage increases. This limit is 15 per cent above the wage rates on January 1, 1941. Within this limit increases may be made to selective groups of employees whose wages lag behind in the race between prices and wages which began about January 1, 1941." (Commerce Clearing House Labor Law Service, Vol. 2, p. 7508).

There are certain exceptions to the Little Steel Formula such as substandard wages, the ironing out of gross inequities or inequalities, either intra or inter-plant, between groups or crafts. But there is no contention, as well there could not be, that the wages paid the engineers are substandard; nor do we find this request involves a process of removing inequities or inequalities between groups or crafts. It is in effect a request for a raise to those men whose daily earnings are below the proposed floor. Present rates set out in Exhibit "A", Supplement January 8, 1945, reveal that for a trip of 100 miles it would require the operation of engines with weight on drivers, before the $10.75 would be earned, as follows:

PASSENGER SERVICE

Valley Districts, none except Articulated Consolidated, above 600,000 lbs.

Mountain Districts, above 750,000 lbs., except in the case of Articulated Consolidated, above 450,000 lbs.

Freight Service

Valley Districts, above 400,000 lbs. for through freight, and above 300,000 lbs. for local freight. Articulated Consolidated, all weights, would take the $10.75 rates or more.

Mountain Districts, above 350,000 lbs. for through freight and above 200,000 lbs. for local freight. Articulated Consolidated all weights.

Below the above-named weights the difference between existing rates and the $10.75 would have to be made up by increased trip mileage or by other augmentations in pay.

In switching service for a day of eight hours only the use of Articulated Consolidated would yield a rate of $10.75 or better. Thus it appears that in effect there would be a large group of men to whom this minimum would grant an increase in rates, a credit to be given by the minimum absorbing certain augmentations in pay such as for overtime, terminal delay or dead-heading time.

In yard or roustabout service the tours of duty are eight hours or approximate that time and no overtime is usual, or in the case of road service with lower weighted engines, it would in effect result in the main in an increase in the rates of pay.

It is suggested that the Little Steel Formula is outmoded and that it is more observed in the breach than in compliance. Perhaps so, but we do not think it is for us to decide that question. It is also suggested that where the proposition for wage increase is fair, ingenuity finds a way under the law to grant it. But, while under Section 202 of the Stabilization Extension Act of 1944 our findings are conclusive where certified, we are bound in good conscience and honor not to certify in instances where the requested raise is not consistent with established standards.

While sympathetic to the principle involved in the request, we are helpless to recommend it, because there is no doubt that if granted it would raise the minimum rates in many cases far above the 15 per cent allowed by the Little Steel Formula. In fact, that 15 per cent has already been absorbed. The fact that overtime and other augmentations in pay may be used by the Company as a credit against the proposed guarantee in cases where such augmentations are available does not change the fact that the basic rate of pay for operating the lower weighted engines is increased in many of the services.

What has been said above makes it unnecessary for us to consider whether the effect of the President's Award granting five cents per hour was meant to preclude any further application for increasd pay because of away-from-home expenses for the duration or any application for increases in basic rates for the duration.

We have had doubt as to whether we should recommend no action on this request, leaving it in abeyance for further negotiation if the Little Steel Formula were modified or abolished, or to deny it without prejudice against a request later. We have decided that the latter is the better procedure. Otherwise, this report leaves the matter undecided.

It will not be difficult in case some other standard supplants the Little Steel Formula for the Organization to renew its request. Furthermore, the proposed principle may be one which should be applied nationally rather than locally and in the course of events that may transpire.

RECOMMENDATION:

The Board recommends that the request embodied in Item 14 of Case A-1371 be not adopted, but without prejudice to the right of the Organization to renew the request for the $10.75 or any other figure as it may be advised upon an upward modification of the Little Steel Formula, or its abolishment, or upon official cessation of hostilities, whichever event may be the sooner.

CASE A-1371—ITEM 15

I

Organization's Request

The Brotherhood's request reads:

> It is agreed that the minimum age limit of engineers to be hired by authority of Section 5 (a), Article 32, Engineers' Agreement, shall be 56 years. (Ex. "B", 9.)

Article 32, Section 5 (a) referred to in the instant request reads as follows:

> #### HIRING AND PROMOTION
>
> Section 5 (a): On a seniority district where firemen are required to fire less than three years, all engineers will be hired:
>
> If required to fire 3 and less than 4 years, 1 promoted and 1 hired;
> If required to fire 4 and less than 5 years, 2 promoted to 1 hired;
> If required to fire 5 years and less than 6 years, 3 promoted to 1 hired;
> If required to fire 6 and less than 7 years, 4 promoted to 1 hired;
> If required to fire 7 and less than 8 years, 5 promoted to 1 hired;
> On seniority districts where firemen are required to fire 8 years or more, all engineers will be promoted.
>
> The foregoing will not prevent committees from having discharged engineers re-employed or re-instated on their former seniority districts at any time." (Ex. "A", 92-93.)

II

THE ISSUE

The issue in the instant proposal is whether the present flexible policy of determining the hiring age for engineers, partly in accordance with the conditions of the labor market and partly according to the prospect of an extended period of service, within the jurisdiction of the Carrier, shall be converted into the inflexibility of a fixed age (56 years). Within the limits of the provisions of Section 5 (a) of Article 32, the Company is presently free to adjust its hiring and promotion policy to its own operating requirements and employment standards. The instant request necessarily infringes upon that freedom, consequently it is essential to determine whether such infringement is justified in the light of the criteria of experience, desirability or necessity.

III

POSITION OF THE PARTIES

1. *Organization's Arguments:*

The Organization insists that it seeks here to establish through agreement a maximum age (56 years) for the hiring of experienced engineers, and that the specific age limit is necessary in order to prevent the Carrier from the purposeful manipulation of the hiring age to the disadvantage of members of the craft of engineers. In support of this contention, the Brotherhood asserts that at the time the instant request was first submitted the Carrier had an age limit of 45 years in employing experienced engineers from other railroads, and that despite the shortage of engineers occasioned by the war emergency the Carrier's age limit of 45 years precluded the hiring of available experienced engineers from other carriers (Tr. 6152-6153); that subsequently the Company was compelled by the force of circumstances to recognize the necessity of raising the hiring age limit to 56 years; that consequently, the instant request is not in conflict with the Carrier's present policy and practice (Tr. 6154).

The Organization insists that in specifying 56 years as the hiring age, it does not intend to preclude the hiring of engineers above that age, but adopted the indicated age because other railroads, notably the Santa Fe Coast Lines, have found that limit practicable and desirable; that there is no intention here of establishing an Organization hiring hall, since an engineer must still meet the Carrier's standards of employability (Tr. 6155). What the Organization contends is that the request seeks primarily to prevent the Carrier from so narrowing the hiring age limits as to preclude the accession of outside engineers and restricting the labor market to the Company's own list of engineers, thus virtually nullifying the provisions of Article 32, Section 5 (a) of the Engineers' Schedule (Tr. 6155-6159); that at age 56 an engineer has a possible 14-year period of service before reaching the maximum pension age limit of seventy, and it would be only fair that such an engineer be not denied the opportunity of employment with the Carrier (Tr. 6168-6169).

2. *Carrier's Arguments:*

The Carrier insists that in the request the fundamental question is not as to whether a hiring age of 45 or 56 is reasonable, but as to whether the Organization, which disclaims emphatically any responsibility for the acts of men employed by the Carrier, shall dictate whom shall be employed and a part of the qualifications for employment. The Carrier believes that whatever the hiring age may be it is the right and responsibility of the Company to say who shall be hired; that the determination of the qualification of all classes of employees always has been, is presently, and must remain the exclusive responsibility of Management (Tr. 6200-6164).

The Company emphasized that it has the direct legal responsibility of operating its trains safely and efficiently; consequently it cannot permit another party, such as the Engineers' Organization, to arrogate to itself the fundamental right of determining hiring standards and employment qualifications; that to do this would be to encourage additional demands involving encroachments upon the prerogatives of Management (Tr. 6200).

The Carrier contends that the present request does not come within the purview of the subject-matter of collective bargaining between a craft representative and the Company, but merely constitutes an attempt to project the Organization's authority into the function of hiring; and that the Engineers' Organization's right to negotiate with the Company is restricted by the Railway Labor Act to matters covering the rates of pay, rules and working conditions of employees who are members of the existing craft or class of engineers (Tr. 6200-6201).

The Company states that the present request, if accepted would modify its own policy of hiring, which, though flexible to meet changing conditions of the labor market, does not in normal times contemplate hiring as new employees any engineers over 45 years of age; and insists that freedom in the application of its hiring policy is indispensable to the development of the type of operating organization desired by the Management and expected by public authority; that in no other way can it be assured of competent employees (Tr. 6201-6202); that the First Division of the National Railroad Adjustment Board has sustained this right and freedom of hiring and employment policy and practice in Award 10305 and Award 10306 (Tr. 6206-6207).

Finally, the Carrier insists that there is nothing in the provisions of Section 5 (a), Article 32, which is mandatory in the matter of hiring from outside of the Company; its language is completely permissive; that, therefore, there is no basis for the Organization's contention that the Company's present hiring policy in any way violates either the spirit or letter of said provisions (Tr. 6203).

IV

DISCUSSION AND RECOMMENDATION

The fixing of a maximum age limit for engineers to be hired deals with a qualification. We have heretofore in connection with Item 12, Case A-1371, held that the fixing of qualifications for engineers is within the prerogative of the Company; that unless it voluntarily desired to contract to surrender such prerogative in cases where it did not appear against public policy, no Board should recommend that it do so. The Carrier has the responsibility for the safe operation of its road. Anything which detracts from that responsibility or which places it between two fires should be carefully avoided.

RECOMMENDATION:

The Board recommends that the proposal embodied in Item 15 of Case A-1371 be not adopted.

CASE A-1371—ITEM 16

I

ORGANIZATION'S REQUEST

The Organization's request is set forth as follows:

> Subject: Article 30, Section 3 (a), that part reading: *"Two years' experience in actual road service and sixty days on seniority district where vacancy occurs,"* changed to read: *"One year's experience in actual road service and sixty days on seniority district where vacancy occurs."*
>
> Change NOTE (3) following to read: "One year's experience as referred to is interpreted to mean an engineer will be required to be on the board ready for service not less than 305 days following promotion before he will be considered eligible for passenger service." (Ex. "B", 9; Ex. "A", 77.)

II

THE ISSUE

The question at issue in the instant proposal is whether the present eligibility requirement of two years' experience in actual road service before an engineer shall be required to go on the board for passenger service shall be reduced to one year, and consequently, whether the present provision of not less than 610 days following promotion before such engineer will be considered eligible for passenger service shall be reduced to not less than 305 days (Tr. 6264-6265). The central point in the resolution of this issue is whether the current provisions of the Engineers' Schedule necessitate too extended a period in road service subsequent to promotion before an engineer is regarded as qualified to function safely and competently in passenger service.

III

POSITION OF THE PARTIES

1. *Organization's Contentions:*

The fundamental contention of the Brotherhood in the controversy is that the length of time an engineer may be on the working list, whether he is working or not, does not necessarily qualify him, or determine that he is qualified, to operate a passenger train. Under the present provisions of the Rule, the Organization points out that a man may be promoted and be assigned to a work train in a construction camp or gravel pit, and work there 610 days, or even be on the board ready for such service, but never operate a train, yet be considered qualified to handle a passenger train (Tr. 6265-6266).

Currently on the Southern Pacific Railroad, the Brotherhood asserts, when a man is either promoted from the ranks of fireman or is hired, he is subject to an examination on the subject of the locomotives, air brakes, time-table, train orders and book of rules, to satisfy the Carrier of his ability to handle an engine competently and safely, but only actual operation can demonstrate that ability (Tr. 6266-6267).

The Brotherhood here reaffirms its conviction that men do not necessarily become train handlers by having two years' experience in service which pays road rates (Tr. 6269). It holds that a much more reliable safeguard of safe and efficient operation of a train by an engineer is the simple procedure of having the Road Foreman of Engines ride with an engineer to determine his qualifications for passenger service, and that with this safeguard, the present Rule can safely be revised as suggested in the proposal (Tr. 6267-6270).

The proposal is neither new nor experimental since on the former E. P. & S. W. now owned and operated by the Southern Pacific Company, the corresponding Rule (Article 28, Section 8) defines one year's seniority to mean an engineer will be required to be on the Engineers' Working List for service not less than 355 days following promotion before being considered eligible for passenger service; and requires performance of actual service as an engineer of 36,500 miles, except hired engineers must have performed 18,200 miles (Tr. 6347-6348).

2. *Carrier's Arguments:*

The Carrier contends that the present requirement of two years' experience in actual road service and sixty days on the district where employed has been in force since October 5, 1917, having been previously (since December 1, 1912) by agreement three years (Tr. 6296-6297). Admittedly, the Carrier states, there is no substitute for experience, and that certain exceptionally proficient individuals can handle a passenger train safely and efficiently with less than two years' road service experience, but there is every reason to believe that a minimum of two years' experience is necessary for the general run of persons (Tr. 6299).

The Carrier asserts that while in the present national emergency it has been necessary to promote firemen whose railroad experience barely meets the minimum time specified for qualification for promotion to engineers, the recent changes in operating conditions indicate the necessity of requiring three instead of two years' experience, because the speeds and consists of passenger trains have increased materially since 1917 (Tr. 6300-6301).

It must not be forgotten, urges the Carrier, that the Management is charged with the legal responsibility of surrounding its operations with every reasonable safeguard. The responsibility involves protection of the lives and limbs of the traveling public, its employees and all other persons affected by its operations, the Carrier points out. Such a grave responsibility must not be entrusted to inexperienced passenger engineers. In brief, declares the Company, the instant proposal is essentially a plain which inevitably will increase hazards, thus reducing the safety factor in a field of operations and service where by law and public opinion the Carrier is held to the highest standards of safety (Tr. 6301).

IV

Discussion and Recommendation

This case involves a proposed amendment to Section 3 (a), Article 30, Engineers' Agreement. The Carrier has already seen fit by contract to set a limit on the qualifications of an engineer for passenger service. The proposed amendment would cut the qualification of two years (610 days) of actual road service to one year (305 days) of actual road service, thus requesting a further limitation on engineer experience requisite for passenger service.

We think the point made by the Organization that "actual road service" as defined by "Note" of Section 3, Article 30, does not necessarily mean that a man is better qualified for passenger service is well taken. Such engineer may have spent much of his time on work train or rounstabout service, or be marked up on board ready for service the required time and have operated on the main line very little, or not at all. It is conceivable that a rule could be devised which would reflect the actual main-line experience in main-line service such as a minimum mileage in through freight service. But the rule proposed by the Organization does not tend toward such result. Certainly with a two years' mark-up on the board there is more chance that the engineer will have performed service assimilated to passenger runs than if marked up only one year. Again we call attention to the fact that this rule affects qualifications for a certain service and again state that where the safety factor is involved no outside tribunal should substitute its judgment for that of the Carrier unless it is apparent that the Carrier has been arbitrary. The Carrier has the responsibility for running its road safely. It would be, indeed, unfortunate if while the public on the one side holds it responsible in such matters for a Board on the other side to impose upon it a rule which it claimed trammelled its ability to discharge its responsibility in that regard. If an accident happened which the Carrier could claim was due to an inexperienced passenger engineer it might well point the finger of blame to the Board, although it would have to respond for the inexperience of the engineer.

The Carrier states that the length of time marked up for service should rather be extended from two to three years than be shortened to one year. We shall not put it in a position where it must accept a recommendation which runs contrary to its judgment regarding necessary experience or reject the recommendation of safety considerations and charged all the consequences thereof.

RECOMMENDATION:

The Board recommends that the proposal embodied in Item 16, Case A-1371, involving a proposed amendment to Section 3 (a), Article 30, be not adopted.

CASE A-1371—ITEM 17

I

ORGANIZATION'S REQUEST

The Organization's request reads:

> When engineers on two districts desire to exchange district rights, they will be allowed to do so, provided they receive the approval of the General Committee of Adjustment, Brotherhood of Locomotive Engineers, and the General Manager or his designated representative, taking the junior engineer's rights in both cases.
>
> If objection is raised by either party to the Engineers' Agreement, the reason therefor shall be clearly stated, and if no agreement is reached the matter may be progressed in the usual manner of handling grievances. (Ex. "B", 9-10.)

II

THE ISSUES

Section 8 (a), Article 32, of the current Engineers' Agreement provides that engineers on two districts shall have the privilege of exchanging seniority rights, subject to the approval of the proper officials. Said Section 8 (a), Article 32, reads:

> EXCHANGING DISTRICT RIGHTS
>
> Section 8 (a): When engineers on two districts desire to exchange district rights, they will be allowed to do so, provided they receive the approval of the proper officials taking the junior engineer's rights in both cases. (Tr. 5631-5632; Ex. "A", 98.)

The instant proposal is, therefore, not for a new Rule, but rather for an amendment to an existing Rule. The contentions of the parties appear to center about interpretation of the phrase "proper officials". The question at issue here is whether in lieu of the phrase "the proper officials", the Rule shall be amended to read "the approval of the General Committee of Adjustment, Brotherhood of Locomotive Engineers, and the General Manager or his designated representative . . . "

III

POSITION OF THE PARTIES

1. Organization's Contentions:

The Organization contends that the instant proposal is needed in the interest of definition and clarification of the language of the current Rule 32, Section 8 (a), because the Carrier and the Engineers have disagreed on the meaning of the phrase "the proper officials", the Carrier insisting the reference is to officials of the Company alone, the Engineers claiming that officials of both the Company and the Brotherhood of Locomotive Engineers are referred to (Tr. 5632). Serious disagreements continue, the Brotherhood declares, because under application of the present Rule the proper official of the Carrier is the Division Superintendent, and when two Division Superintendents cannot agree on an exchange desired by the two engineers from different seniority districts an impasse is reached (Tr. 5633).

Serious abuses may arise under the Rule as presently interpreted by the Carrier, which places arbitrary authority in the hands of Division Superintendents, asserts the Organization. This fact is illustrated by the case of Engineer J. E. Nasset and Road Foreman of Engines, C. G. Holmberg, where Company officials acting alone and arbitrarily allowed an active engineer to exchange district rights with an engineer on leave of absence in the Company's service, which actually was the equivalent of selling of seniority rights, insists the Brotherhood (Tr. 5634-5636; Ex. "II", 1-2). That incident presently is before Division 1, Railway Adjustment Board, the Organization states (Tr. 5637).

The dangers involved in the current application of said Rule are also evidenced in the case of Engineer J. H. McMackin and Engineer C. B. Lee, San Joaquin and Stockton Districts, respectively, whose request for an exchange of districts was approved by the Superintendent of the Western Division and disapproved by the Superintendent of the San Joaquin District. In this instance, the Organization declares, no reasons were given the engineers involved for the refusal of the proposed exchange (Tr. 5641-5642; Ex. "II", 4). It is clear, the Organization asserts, that personal favoritism or partisan likes and dislikes, rather than reliable and legitimate reasons, may enter into this matter of district exchanges under the present interpretation of the Rule, hence amendment is imperative (Tr. 5642).

Seniority, says the Brotherhood, is an important concern of engineers; they create it, and must be free to exchange it when they desire to do so. Seniority affects the man rather than the

Management, consequently, the men are solicitous to avoid any favoritism, discrimination, or prejudice that may issue from Company officials in the exercise of the rights and privileges that attach thereto, the Organzation declares. The proposal for amendment will, if accepted, provide the requisite safeguard (Tr. 5642-5645; 5665-5670, 5686; Ex. "II", 3). Seniority, insists the Organization, is not an individual right, but a craft matter; it is not an individual property right, but a mechanism created by a craft for mutual advantage; the craft creates it and the craft can destroy it. Regulation and protection of seniority, and not its destruction, is the instant concern of the craft of Engineers here, the Brotherhood declares (Tr. 5828-5829).

2. *Carrier's Contentions:*

The company is careful to point out, first, that under the present Engineers' Agreement there may be an exchange of seniority rights between engineers upon approval of the Superintendents of the Division involved, and that this provision for exchange has been interpreted and applied without dispute for thirty years (Tr. 5818). In this connection, it is imperative to remember, asserts the Carrier, that an engineer trained and experienced in operating an engine in flat valley territory may not be competent in mountainous territory, consequently, Division Superintendents who are responsibile for operations must be free to decide whether a given exchange of districts between engineers shall be approved (Tr. 5688-5689).

The Carrier insists that the instant proposal of the Engineers' Organization would establish a means of discrimination against individual engineers on the basis of their union affiliation, and thus involve a violation of the provisions of the Railway Labor Act which guarantee to employees freedom to choose what organization they wish to join and to have that organization represent their economic interests (Tr. 5690-5691). In this connection, it is essential to keep in mind, the Carrier asserts, that on the Company's lines two separate and distinct labor organizations represent all employees in locomotive service (in B. L. E. and B. L. F. & E.) and that these two unions are competitive. The instant proposal would subject any exchange of district rights to the approval, not only of the Company's officers as presently, but also to that of the General Committee (actually the General Chairman) of Adjustment of the Brotherhood of Locomotive Engineers, to the exclusion of the Brotherhood of Locomotive Firemen and Enginemen, the Carrier urges (Tr. 5691-5693). All this is apparent in the dispute presently pending before the First Division, National Railroad Adjustment Board, in Docket No. 16359, insists the Carrier (Tr. 5691-5692).

Contrary to the opinion of the B. L. E., the Carrier declares, the right to exchange seniorities is an individual and personal right of the engineers arising from the craft agreement, and is not a right or privilege of the craft. Under the instant proposal, asserts the Company, this individual right would be subject to the veto power of the General Committee of the Brotherhood of Locomotive Engineers, which would consequently have the unrestricted power to discriminate as between members and nonmembers of that Brotherhood, to the serious disadvantage of members of the Brotherhood of Locomotive Firemen and Enginemen (Tr. 5818-5819).

The Carrier asserts that the instant proposal arises out of the B. L. E.'s apprehension concerning the outcome of the case presently before the N. R. A. B., Division 1, which is to determine whether under the present Rule an exchange of seniority districts must be approved by that Brotherhood before becoming effective. The present request is merely an attempt to pre-try that case, the Carrier insists. If the proposed amendment were accepted, it would place in the hands of the B. L. E. a very powerful weapon of inducement to membership in that Organization, a persuasive weapon of the same character, although perhaps not to the same extent, as was discussed by the Emergency Board in Case No. 1 of the cases presented in 1937, the Carrier declares. The proposal is a somewhat devious method to obtain the equivalent of a closed shop, urges the Carrier (Tr. 5819-5821).

The proposed amendment is further objectionable, asserts the Carrier, because it is attempted invasion of the sphere of Management, in that it would allocate to an organization having no responsibility in the premises a deciding voice equal with Management in determining who may or may not render service as an engineer on any part of the Company's lines (Tr. 5695). There can be no doubt, the Carrier insists, that the instant proposal undertakes to limit and circumscribe the right of the Company's Division Superintendents to pass upon and if so advised, to disapprove transfers of men whose qualifications are not deemed wholly acceptable (Tr. 5819-5821). The right of determination in such matters is established for the Company in the Railway Labor Act and in the Virginian case, declares the Carrier (Tr. 5821).

3. *Position of the Brotherhood of Locomotive Firemen and Enginemen:*

Interceding in behalf of the members of the Firemen's craft, the B. L. F. & E. insists that practically its whole argument in regard to Items 12 and 13 of Case A-1371 are applicable here also. Here again, insists the Firemen's Organization, is an attempt to create, or at least to strengthen, a contract with the Carrier, namely, the right of seniority exchanges by engineers; to limit the right created by the craft contract to those members of the craft approved by the General Committee of Adjustment of the B. L. E.; and to place in the Engineers' Committee the exclusive right and power to handle grievance cases, regardless of the wishes or best interests of the individual engineer concerned (B. L. F. & E. Memorandum in re Case A-1371, Items 12, 13, 17, 18, pp. 35-36).

Under the proposed amended Rule, the Engineers' Organization, obeying the dictates of self-interest, would naturally serve itself and its members through preferential treatment of its own, the B. L. F. & E. asserts. Moreover, the Firemen's Organization insists, it is a self-evident fact that every privilege which can be extended or withheld exclusively by the Engineers' Committee is an organizing argument to be addressed to the engineer members of the Firemen's Brotherhood, and that argument would be greatly strengthened, if the Firemen's Organization could be deprived of the right to represent members in any grievance involving privileges. It is apparent the B. L. F. & E.'s right to represent its members in grievance cases is seriously jeopardized under the proposed amendment, the Firemen contend (Tr. 5778, 5793, 5808-5817; Memorandum of the B. L. F. & E. in re Case A-1371, Items 12, 13, 17, 18, pp. 36-37).

The Firemen's Organization asserts that there is neither need nor urgency for changing present schedule provisions since there have been only seven or eight exchanges of seniority rights in the past ten years (B. L. F. & E. Memorandum in re Case A-1371, Items 12, 13, 17, 18, p. 37; Tr. 5782-5783).

It is important to keep in mind, insists the B. L. F. & E. that if the Firemen's Organization were to obtain the same veto and restriction or exchange of firing rights as the Engineers' Organization here seeks with regard to engineer rights, the practical result would be to preclude exchanges altogether, except between men so high up on the engineer list that could afford to forego firing rights. Such action would undoubtedly create a special privilege and an undesirable situation, the Firemen contend. In this connection, the B. L. F. & E. states that the Firemen's Schedule provides for an exchange of district rights between firemen, and provides that engineers exchanging seniority rights may exchange firing rights also (Carrier's Ex. 102, Art. 40, Sec. 6, p. 96). It is impracticable and unprecedented that a man should have engineer seniority on one district and fireman seniority on another; and the Carrier admittedly would prohibit such a circumstance, the Firemen insist. Yet this is the conceivable consequence of the instant proposal, the Firemen allege (Tr. 5782, 5704; B. L. F. & E. Memorandum in re Case A-1371, Items 12, 13, 17, 18, pp. 37-38).

IV

Discussion and Recommendation

At the outset of this case we are met with a difference of opinion as to the term "proper officials" as the same is used in Section 8 (a), Article 32, Engineers' Agreement. The Organization contends that the reference is to officials of both the Company and the Brotherhood; the Carrier that it refers to Company officials alone. This matter is now before the First Division, National Railroad Adjustment Board, Docket No. 16359. If that Division holds with the Organization it would have accomplished the purposes contemplated by the first paragraph of the request. If the Division holds with the Company, the request would then amend Section 8 (a) as so interpreted. The request is, therefore, premature. We do not think it proper while such matter is pending before the First Division to express any opinion on the meaning which should be given to the words "proper officials". We shall, however, consider it as if "proper officials" was interpreted to mean Company officials alone for only in the light of such interpretation would the first paragraph of the request be efficacious.

The Firemen's Organization raised objections to the request on the ground that it gives to the Engineers' Organization a power to veto the exchange and thus puts in the hands of that Organization a powerful argument for the recruiting of engineer members of the Firemen's organization. We think the objection of the Firemen's Organization is well taken for reasons largely already expressed in connection with our treatment of the request contained in Items 12 and 13, Case A-1371.

The Engineers' Organization argues that the matter of seniority is a craft matter and that it represents the craft of engineers. But it only represents such craft for bargaining purposes. When it seeks as it does in the first paragraph of the requested rule to inject itself as the determinor of whether a right may be exercised by individuals or where it seeks to make a right depend on its approval, it goes much further. It then is not bargaining for all the members of a craft, but is bargaining to put itself into a position where it has power to discriminate between members of a craft. We doubt if that power was ever intended to be given by the Railway Labor Act. It is a power which may be used to discriminate against non-members of either Engineers' or Firemen's Organizations, or by the Engineers' Organization against the engineer members of the Firemen's Organization.

An organization that represents a craft for bargaining purposes might, contrary to Steele vs. Louisville and Nashville R. R. Co., et al, 323 U. S. 172; 89 L. Ed. 172, attempt to agree with the Carrier to fashion a rule which would be discriminatory. Such rule would be invalid. It is a close second to such attempt to agree to a rule which would place in the hands of one man or a committee for a representative organization, a power which would give such man or committee, or the organization itself, the authority to determine who should or should not enjoy a right or a protection to be afforded by a proposed rule, especially when such power contains the potentialities of a use which would tend to build up the organization possessing the power to the detriment of a competing organization.

There seems to be no substantial reason why any engineer in one seniority district should not be able to exchange with an engineer in another district, provided both took the rights of the junior engineer. The only person who would really be adversely affected would be that Engineer "A" in the exchange who had the higher seniority of the two. He would take a lower seniority date, but that would only put him in place of Engineer "B" whose place he took on the seniority roster of the district to which he went and affect no one above him nor anyone below him on that roster. Engineer "B" who went to the district from whence "A" came would simply go lower on that roster than Engineer "A". That would be favorable to those names which appeared on the roster between Engineer "A" and the newcomer's, Engineer "B", place on the roster. Those names would move up each one notch, but no one below Engineer "B" would be affected because they would be held in the positions they were in before the exchange. It is difficult to see why the group of engineers on either district as such should have any real interest, unless it involved a case where, as in the exchange of Nassett and Holmberg, it did not take Holmberg from the working list because he was then Road Foreman of Engines whilst it placed Nassett on the working list, thus effecting a net increase of one man on the working list in the Sparks District. Perhaps that is why the procedure of voting on the desired exchange by the engineers in both districts was abandoned, viz., because there was not sufficient interest. Of course, we are looking at the matter from an economic and property viewpoint, and not from the fraternal viewpoint. What the conditions may be for an engineer from one district to enter the lodge of another district if he happens to belong to the Brotherhood of Locomotive Engineers we know nothing about, and we do not think that can or should in any event govern the right of engineers to exchange. The rights of an engineer to position and livelihood are one thing; his right to fraternize or join, or be integrated into a lodge or local of the Brotherhood is another thing.

We, likewise, see no real reason why the Carrier should have a right to veto an exchange agreed upon by two engineers under the terms of Section 8 (a), Article 32, unless it should create vacancies which would disturb operations. But that may occur every time one engineer on the district exercises his seniority right. The position he leaves will have to be readvertised. That is so common and usual we cannot see that it looms as an objection. The Carrier argued that the superintendent of the division should have the right to prevent a man who was personally obnoxious to him from coming into his division, but the matter must be treated on an impersonal plane. Certainly by the very principle of seniority some less efficient or personally less desirable men displace more efficient men, or more personally desirable men, and to that extent disrupt a superintendent's organization. It was further said that a man coming into a mountain district under an exchange might have had only valley experience. We think that comparatively minor. In Case A-1594 the Carrier took the position that the factor of an engineer from a foreign district not having the familiarity with the road as engineers on the home district was minor because they would be piloted over the road by the Road Foremen or instructors until they knew the curves, mile posts and road signals, etc. While mountain operation is undoubtedly more difficult than valley operation, trial runs under men familiar with the territory and operation would soon teach the new man. The matter of exchange is essentially a matter for the two men concerned. It does not concern the group or craft, not to any material extent the Carrier. While seniority arises out of a craft contract it becomes an individual right. The contract creates rights somewhat equivalent to those which may be created by legislation. The legislature may abolish the right if it has not become vested by repealing the law which created the right, but as long as the law stands, individuals may obtain rights under it without getting the consent of the legislature or the members thereof.

We have considered a modification in the proposed rule which would give both the General Manager, or his designated representative, on the one hand, and the General Committee of the particular organization to which the engineer in either district may belong, on the other hand, to give or withhold approval of the exchange. We have also considered a plan which would require the General Manager, or his designated representative, *and* the General Committees of both Engineers' and Firemen's Organizations to approve the exchange. These plans introduce so many opportunities of veto that any exchanges could be checkmated, and they make the engineer who may belong to no organization obtain the approval of one or both Enginemen's Organizations. The machinery is too awkward and creates a gauntlet of veto powers for each contemplated exchange, and for little, if any, purpose, as here above observed. Moreover, it is quite doubtful if the Engineers' Organization would accept it as it would not accomplish the purpose it apparently has in mind in requesting the proposed amendment.

We have considered it better to leave the rule as it stands, subject to interpretation by the First Division, National Railroad Adjustment Board.

We see no objection to an amendment to Section 8 (a) of Article 32, which would require the "proper officials" whoever they may be, to state clearly in writing their reasons for any disapproval of a desired exchange, and for the matter to be progressed in the usual manner for handling grievances. But the proposal contained in the second paragraph of the request does not provide for an appeal from objections raised by the "proper officials"; rather it is limited to the matter in the first paragraph of the request which we cannot recommend. We deem it better that if such appeal provision is desired it await a determination by the First Division as to the meaning of "proper officials." At that time a request in that regard may then be made, if, indeed, the appeal provisions of the Agreement and the Amended Railway Labor Act do not already apply to Section 8 (a) of Article 32 as it now reads.

RECOMMENDATION:

The Board recommends that the proposal embodied as Item 17, Case A-1371, be not adopted.

CASE A-1371—ITEM 18

I

ORGANIZATION'S REQUEST

The request reads:

> It is understood that any engineer having been in the service of the Company as an engineer for the space of five years be granted leave of absence for one year and retain his seniority rights: provided, he does not accept a position on any other railroad, except in an official capacity.

> Upon application, leave of absence will be extended for periods of not to exceed one year in each instance, but must have the approval of the General Committee of Adjustment, Brotherhood of Locomotive Engineers.
>
> The extension of leave beyond the first year only applies to engineers elected or appointed to public positions.
>
> Aftr three months, on application, as provided for in Section 12, this Article (32), he will have the privilege of displacing any engineer his junior. (Ex. "B", 10; Ex. "A", 104.)

II

THE ISSUE

The subject matter is covered partially in Article 32, Section 17, of the current Engineers' Agreement. The present proposal is, therefore, for an amendment to the existing Rule governing leaves of absence for engineers. The requested changes add to the first paragraph of this Rule the qualifying phrase "except in an official capacity", and new second and third paragraphs which provide that leaves of absence may be extended for a period of one year upon approval by the General Committee of Adjustment, Brotherhood of Locomotive Engineers, and restricts this extension of leave beyond the first year to engineers elected or appointed to public positions. The question before us is, therefore, whether these modifications of Rule 32, Section 17, of the current Agreement covering engineers shall be approved (Ex. "A", 104; Ex. "B", 10).

Involved in the proposed amendments is the establishment of control of leaves of absence after the first year in the Brotherhood (Tr. 5838-5840).

III

POSITION OF THE PARTIES

1. *Organization's Contentions:*

The Organization insists that the proposed revision of the current Rule is necessary because application of the Rule in recent years has proved very detrimental to the Brotherhood and very advantageous to the Carrier. Evidence of this fact is presented in Employee's Exhibit "KK", in which is detailed the case of Engineer J. V. Nardini, Coast District. Engineer Nardini who was appointed by the Governor of California as Superintendent of the State Belt Railroad in San Francisco, has requested and received approval for frequent extensions of leave of absence beyond the first year. The Organization alleges that it was to the advantage of the Carrier to cooperate with Engineer Nardini in this matter and so to continue his leave of absence (Tr. 5833-5834; Ex. "KK", 1-2).

The Organization then contrasts the Nardini incident with that of Engineer E. T. Houston, Tucson District, who took a leave of absence to accept appointment by the Governor of Arizona as a member of the State Industrial Commission. Although said appointment was for four years, Mr. Houston's request beyond the first year was denied by the Carrier, allegedly because of his extreme frankness in handling matters involving operation of the railroad of this Carrier (Tr. 5834-5836; Ex. "KK", 3-4).

Both of these are members of the B. L. E. and applied for an identical privilege under the same Rule of the Engineers' Schedule under similar circumstances, yet it is insisted there was obvious discrimination against Engineer Houston (Tr. 5836, 5848; Ex. "KK").

The Modification to extend the privilege of leaves of absence beyond the first year to engineers who accept employment in an official capacity with another railroad is intended to cover those cases where said railroad may wish to borrow an engineer temporarily to demonstrate certain appliances, facilities, or equipment (Tr. 5836). The Organization states that its interest in and desire to control leaves of absence in all cases is attributable to the direct relationship that exists between said leaves and seniority rights (Tr. 5838).

2. Carrier's Contentions:

The Carrier is firmly of the opinion that the proposal is open to the same objections as were advanced against Item 17, in that its acceptance would mean restriction of the privilege of extending leaves of absence to those men who were able to obtain approval of the General Committee of the Engineers' Brotherhood, if otherwise qualified. Engineers who are not members of the B. L. E. could suffer disadvantage; that such unequal and discriminatory treatment would be contrary to its policy (Tr. 5895-5896).

The Carrier insists that there is not the slightest basis for the Organization's charges that the Company acted selfishly, and with discrimination or prejudice in the case of J. V. Nardini and E. T. Houston. The Carrier asserts that the extension of leave and preservation of seniority rights for Mr. Nardini were mutually approved by the Company and the Brotherhood, and the Company is in no position to obtain favors because of his temporary position as Superintendent of the State Belt Railroad; that in the Houston case the Carrier has so few employees who come under the Arizona Industrial Commission Act as to preclude such influence as the Organization implies entered into the Company's disapproval of his leave beyond the first year; that as a matter of fact, the Company was in so great need of Mr. Houston's services as to make extension of his leave unwise (Tr. 5853, 5897-5898, 5906).

It is notable, the Company asserts, that the B. L. E. has manifested a conflicting attitude with regard to the Carrier's decisions in the cases of Mr. Nardini and Mr. Houston, two of its own members, but vehemently protested extension of leave for Mr. D. D. Eagan, a member of the Firemen's Organization, but not of the B. L. E. (Tr. 5899-5804).

In relation to the instant proposal, the Company contends that the Railway Labor Act provides not only that the majority of any craft or class shall have the right to determine who shall be the repersentative of the craft or class, but also that an individual shall have the right to select the labor organization of his choice and that a Carrier shall not influence that choice; that it is clear, therefore, that the proposed amendments to Section 17, Rule 32, of the Engineers' Agreement is designed to establish a closed shop and inevitably would involve the Company in jurisdictional disputes between the B. L. F. & E. and the B. L. E. (Tr. 5904-5905)—two organizations which are highly competitive. The inevitable consequence of the instant proposal, if accepted, would be to accentuate the conflict between them, since the modified Rule would place a premium upon membership in the B. L. E. as contrasted with membership in the B. L. F. & E. from the standpoint of engineers or prospective engineers (Tr. 5906-5907).

3. Position of the Brotherhood of
Locomotive Firemen and Enginemen:

The B. L. F. & E. states that its intercession in behalf of its members in this case is based upon several allegedly important considerations. In the first place, the B. L. F. & E. contends that the present Rule of the Engineers' Schedule does not limit leaves beyond a year to holders of public office, nor does it require approval of the Engineers' Committee of Adjustment as a condition to leaves or extensions of leaves (Employees' Exhibit "A", Article 32, Sections 16, 17, p. 104). Secondly, the proposed Rule would issue in discrimination against the Local and General Chairmen of the Firemen's Organization, most of whom hold seniority as locomotive engineers, because under the amended Rule such officers could not continue in their Brotherhood positions without sacrificing their seniority as engineers, in view of the restriction of extensions of leaves to engineers who are appointed or elected to public office (Tr. 5868-5869).

Here again, insists the B. L. F. & E. there is an attempt on the part of the B. L. E. to infringe upon the individual's right and free choice of representation, and consequently trespasses upon the right of the Firemen's Organization to represent its members.

The Firemen's Organization asserts that through the instant request the B. L. E. seeks not only to create a schedule right, but to limit that right to those engineers whom the Engineers' General Committee of Adjustment may approve; then, if any grievance cases arise from the Rule, to establish exclusive jurisdiction in the Engineers' Committee to handle that case. This is again contrary to the standard representation rule, the B. L. F. & E. insists (Tr. 5860, 5877-5878; Memorandum of B. L. F. & E. in re Case A-1371, Items 12, 13, 17, 18, pp. 38-40).

Finally, the Firemen's Organization insists that the instant proposal is but another attempt to extend the B. L. E's. practice of causing disadvantage to members of the B. L. F. & E. and to encourage membership in its own organization. There is proof enough of this intention in the fact that the B. L. E. sent a committee of three to Mr. D. D. Eagan which suggested to him that if he were to join the Engineers' Organization his leave of absence to serve on the California State Board of Equalization would be assured (Tr. 5890), and in the threat to have Mr. C. W. Moffit, General Chairman of the B. L. F. & E., obtain approval of Division 415 of the Engineers' Organization at Roseville, California, for a leave of absence to serve in an official capacity for the Firemen's Organization (Tr. 5869-5870).

In brief, the B. L. F. & E. insists the arguments advanced by the Firemen's Organization against acceptance of Items 12, 13 and 17 of Case A-1371 apply with full and cumulative force against the instant request, because the attack on the representation rule becomes more apparent and more serious with each effort to make exceptions to it (Memorandum of B. L. F. & E. in re Case A-1371, Items 12, 13, 17, 18, p. 40).

IV

DISCUSSION AND RECOMMENDATION

The matters here involved are quite thoroughly reflected in the statement of the issues and the position of the parties and of the Firemen's Organization. Again is revealed a situation in which the proposed rule would make an extension of leaves of absence beyond a year subject to the exclusive control of one organization, although the applicants for extension of leave might be members of a competing organization. We have so fully discussed the iniquity of such monopolistic control from various angles in connection with Item 17 of this same Case, A-1371, that not much more in that regard need be said about it.

It is claimed that the Carrier has been discriminatory in its treatment of engineers Nardini and Houston. We are not satisfied that the evidence shows any arbitrary discrimination, since under the rules no engineer has a right to a longer leave of absence than one year; presently it is left to agreement between the parties whether in special cases the leave now given as a matter of right shall be extended. Because in one case the Carrier refuses to agree to an extension and in another case agrees to it, does not itself bespeak arbitrariness, because the very bases of the differences in decision may be a difference in situations. But even had the Carrier been arbitrary it is no cure to grant an ex parte power to another which may be arbitrarily used, not only against the Carrier, but against a competing organization.

We are aware that leaves of absence with preserved seniority are of concern to the engineers because it postpones seniority advancement to men who remain with the Company. But the remedy does not lie in giving absolute power to withhold or grant extensions of leave to one organization when many of the members of the craft which it represents are members of a competitive organization. It is difficult to conceive of a power which would carry with it a greater temptation to a use which would tend to build up the membership of the Organization which possessed it to the detriment of the one which did not. It would keep the Carrier in hot water over jurisdictional disputes. In fact, a recommendation that the Carrier adopt such a rule would in effect be recommending that the Carrier place itself in a position where it would be a party to the establishment of a power which could be used to violate, if not the letter, at least the spirit of the Railway Labor Act in that it would give one organization a powerful leverage to influence engineer employees to join the Engineers' Organization in preference to the Firemen's Organization, as well as to coerce non-organization employees to join. It would place in the hands of one organization a power to discriminate so as eventually to bring about virtualy a closed shop with itself as the only surviving enginemen's organization.

The fear of the Firemen's Organization that that part of the proposed rule limiting extensions of leaves of absence only for engineers elected or appointed to public positions would cut off and not permit its Local and General Chairman who holds engineer seniority to hold such offices more than one year, we think largely fanciful in view of Section 16, Article 32. The proposed rule, if adopted, and Section 16 would have to be read together. But it is unnecessary to speculate on any interpretation because, as above noted, we see other serious objections to the proposal. We see no objections to permitting men on leave of absence to work for another railroad in an official capacity if the parties so agree, but such amendment is such a minor part of the whole proposal that such feature if desired by both parties may easily be agreed upon by adopting such amendment alone.

RECOMMENDATION

The Board recommends that the proposed rule embodied in Item 18 of Case A-1371 be not adopted.

CASE A-1371—ITEM 19

I

ORGANIZATION'S REQUEST

The proposal is for a change in Article 32, Section 21 (d) of the current Engineers' Agreement to read as follows:

> If an engineer is suspended or discharged and is proven to have been innocent of the offense charged, he shall be reinstated with seniority unimpaired and paid not less than he would have earned had he not been dismissed or suspended, with a minimum of $8.79 per day for time lost on such account. (Ex. "B", 10-11.)

Rule 32, Section 21 (d) presently reads:

> If an engineer is suspended or discharged and is proven to have been innocent of the offense charged, he shall be reinstated and paid $8.07 per day for time lost on such account. (Ex. "A", 107.)

II

THE ISSUE

The proposed amended portion of Rule 32, Section 2 (d) of the Schedule is that which reads: ". . . with seniority unimpaired and paid not less than he would have earned had he not been dismissed or suspended, with a minimum of . . ."

The issue here is whether instead of the *fixed* sum of $8.79 per day for each day lost on account of suspension or dismissal for an alleged infraction of Company rules and regulations an engineer restored to service with pay shall henceforth be paid the equivalent of all he would have earned, had he not been dismissed or suspended, with a guarantee of *minimum* sum of $8.79 per day for each day lost.

III

POSITION OF THE PARTIES

1. *Organization's Position:*

The Organization asserts that the principal reason why it requests that an engineer be paid not less than he would have earned had he not been dismissed or suspended, with a minimum of $8.79, is because a number of engineers dismissed from service by the Carrier have been reinstated later with seniority unimpaired after special inquiry has proved them innocent of the offense with which they were charged (Tr. 6413).

The Organization sets out that evidence of this fact is revealed in Employees' Exhibit "NN", which sets forth a series of awards rendered by the First Division, National Railroad Adjustment Board; that the engineers in whose favor the findings in those awards were made were out of service for extended periods of time, consequently lost considerably more money than the $8.79 per day provided in Article 32, Section 21 (d), hence were penalized even though found innocent. For example, it is alleged that Engineer B. L. Angel, who was paid $3298.30 under the Rule, would have earned $6416.73 had he remained on his assignment, and engineer L. J. Grose, who was paid $5343.43 under the Rule, would have earned $7927.20 had he remained on his assignment (Tr. 6413-6414; Ex. "NN", pp. 1-3); that it seems only fair that such engineers should be paid the equivalent of what they would have earned had they not been charged with infraction of rules and consequently dismissed or suspended (Tr. 6415).

The Brotherhood insists that none of the First Division's awards, with the possible exception of Judge Swacker's decision, even suggested deduction of the engineers' earnings outside of their regular employment in the stipulated adjustment of wages. If it be urged, as the Carrier here does urge, that outside earnings should be deducted in such an adjustment, then it is imperative that outside losses be recognized (Tr. 6440-6441). The Organization asserts that there is no agreement between the Brotherhood of Locomotive Engineers and Carriers in the United States which provide for the deduction of an engineer's outside earnings under the circumstances relevant here; that, moreover, the question of offsetting outside earnings and losses against total payment of adjusted earnings under the proposed revision of Rule 32, Section 21 (d) is not before the present Emergency Board (Tr. 6526-6558).

2. *Carrier's Position:*

The Company contends that the proposal completely fails to recognize the fact that an engineer, during his period out of service may and in many cases does actually find profitable employment from which he obtains very substantial earnings. As presently phrased, the request would provide for payment of what the engineer would have earned with a minimum stipulated amount for each day lost from the Company's service (Tr. 6475-6476). The Carrier emphasizes the belief that the language of the proposal is intended to exclude any compensatory allowance for earnings in the service of another employer (Tr. 6476).

The Company insists that if in any case it can be held that a dismissal is a breach of contract, then the employee is equitably entitled to not more than the actual net loss of wages payable under the agreement which he has suffered by the supposed breach. Failure to adjust the compensation involved so as to deduct outside earnings is to award a premium because of dismissal and impose upon the employer a penalty more inequitable than would be suffered by the employee if no payment at all were made, because of time lost on account of the supposed wrongful dismissal (Tr. 6476-6477).

The fundamental equity of a principle which confines the payment in cases of wrongful dismissal to actual wage loss suffered, including the allowance of any earnings in other employment, was recognized, it is stated, by the United States Railroad Labor Board in its Decision No. 119, dated April 14, 1921 (Tr. 6477-6478). The Company contends that the First Division, National Railway Adjustment Board, has recognized this same fundamental principle of equity, in Award No. 5862, dated July 18, 1941; and that the same Board's Third Division accorded the principle similar recognition in Awards Nos. 1608 and 1314. More recently still, urges the Carrier, the same basic principle was acknowledged by a Special Adjustment Board created by agreement between the Southern Pacific Company (Pacific Lines) and the Brotherhood of Railroad Trainmen, in cases identified as Nos. 7 and 8 before the Special Board, previously docketed before the First Division of the N. R. A. B. as Nos. 17567 and 17568. In all these cases is found the fundamental conclusion that in any award, such as contemplated in the instant request, the payment should be diminished by any amounts received by the employee in employment outside the service of the Carrier concerned (Tr. 6477-6489; Exs. 142, 143).

A further basic defect in the Organization's request, contends the Carrier, is that it disregards the possibility that the engineer might not have been continuously employed had he not been dismissed, in other words, the proposed amendment would not take into account the likelihood of his loss of time either voluntarily or on account of illness during the period under consideration (Tr. 6489-6490); that instead of the proposed amendment, the existing rule should be changed so as to provide clearly that whatever allowance is made to the employee dismissed and subsequently reinstated with compensation for time lost, that allowance should not exceed his actual net wage loss after taking into account all amounts that he has earned in other employments during the period of the claimed wrongful unemployment by the Company (Tr. 6490); that the principle here suggested by it has been fully acknowledged by the Courts, as, for example, by the Court of Civil Appeals of Texas, and the Circuit Court of Appeals of the Tenth District, on October 13, 1941, and June 23, 1943, respectively (Tr. 6537).

IV

DISCUSSION AND RECOMMENDATION

The request substitutes for a definite sum as the stipulated amount to be paid for each day time is lost during the severance the amount such engineer would have earned, but retains the definite sum as a floor or minimum.

Most of the discussion revolved about, not the proposed new measure of damages, but around the question as to whether moneys earned elsewhere by the engineer while in a discharged status should be deducted from such loss as determined by the proposed new measure of damages. The discussion was not considered irrelevant by the Carrier because it took the position (1) that even under the present rule such deduction should be made, and (2) that even if it should not be made under the existing rule that was because the set figure represented a sum arrived at on a give-and-take basis. If the actual money which could have been earned were made the measure of damages, the give-and-take basis would be eliminated. Thus the common-law rule of making the injured party whole would be just as valid in fixing the damage in an under-the-contract rule as it is in the case of any breach of an employment contract where damages are found by the court.

The First Division of the National Railroad Adjustment Board in one Award, No. 5862, applied the common-law rule, but in Award 3611, Docket 6162, the Board held that where the rule provided that if a man was found blameless he should be compensated for the wage loss suffered by him, no deduction of earnings should be made because the contract intended to establish such payment as the actual amount to be paid without deduction for moneys earned elsewhere; that if such had been the intent, the rule would have definitely specified in that regard.

In Award 9554, Docket 17032, a case dealing not with discharge but with holding an employee from employment after it was claimed he had recovered from illness, a distinction was based on the fact that in such case differing from a discipline case, no stipulated measure of damages was provided. In the course of the discussion in said Award it was stated:

The claim in this case is based on time lost by reason of a claimed breach of the contract which entitled Hinnant to employment according to seniority if there was employment available. In this respect it is in no wise different from any suit in court for a breach of a contract for employment. Referee Swacker in an interpretation of Award 3611 Docket 6162 recognized this but held that the contract there involved had an "alternative provision" which provided that where a discharged man was found blameless he should be compensated for wage loss, if any, suffered by him. It was there observed that nearly all schedules contain some provision in their discipline rule similar to the one there cited. Some provide that he shall be "paid for time lost"; some that he will be paid a minimum day for each day held out of service; some that he shall be paid a specific amount for each day held out of service. Those are provisions of a contract which themselves provide for agreed or liquidated damages in case a man is discharged or suspended wrongly.

In such case Referee Swacker thought the common-law rule would not apply because the parties had themselves contracted for a method of arriving at reparations. This was the case in Award 60 Docket 133. The Union Pacific schedule effective June 28, 1928 provided "if found innocent, he shall be reinstated and paid for the wage loss if any suffered by him." (Rule 161)

Decisions 85 and 87 Railway Board of Adjustment No. 1 and Decisions 943 and 1618 of the Train Service Board of Adjustment—Western Region were all discipline cases involving dismissal. In every case the rules provided that "if found innnocent he shall be paid at regular rates for time lost and reinstated" (Missouri Pacific) or rules to the same effect all providing for "payment of time lost if it is decided that (he) is blameless" (Northern Pacific) or "if discipline is found to be unjust" (A. T. & S. F. Ry. Co.), Award 1058 was a case of wrong dismissal; also Awards 3611, 3612, 3756, 4733 were discipline cases.

The Carrier cites the order of the Uited States Labor Board #119 of April 14, 1921 as recognizing the common-law principle. But the language of that directive does not in specific words say that the earnings during disseverance shall be deducted, although the language is quite susceptible to such construction, and it has been probably so construed. The part of the directive material here reads:

> If the judgment shall be in his favor, he shall be compensated for the wage loss, if any, suffered by him.

This was a procedure imposed on the railroads and not arrived at through agreement. The Carrier also cites Awards 1608 and 1314 of the Third Division, National Railroad Adjustment Board; also cases identified as Nos. 7 and 8 of the Special Adjustment Board created by agreement of this Carrier and the Brotherhood of Railroad Trainmen in cases docketed in the First Division as Nos. 17567 and 17568. But these latter decisions cannot be considered as the authoritive interpretation of any Board constituted by law. Whether they may be considered as precedents on *this* road or as binding only in those cases themselves we do not pretend to say. Decisions of that Special Board may have

been on a give-and-take basis because it was instituted to get prompt action on a number of cases, decisions of which had suffered delay on the First Division.

The Organization contends that Awards of the First Division have sustained claims of discharged men and reinstated said men without loss of seniority and that such rulings carried with them an Award for pay lost during disseverence without mention of deduction for moneys earned, if any, elsewhere. We doubt if the matter can be considered as settled on the First Division.

The Organization advances cogent arguments for adding no definite provision for deduction of earnings made while the engineer is in a discharged status. Besides the argument that similar rules did not specifically so provide, and that the First Division has, except in one Award, to-wit, Award 5862, held otherwise, or at least not specifically decreed deduction, it is advanced that the earnings might in many cases be hard to calculate; that such holding would discourage initiative and ambition; that the common-law rule does not reflect a railroad employee's situation in that such employee often is under large expense in moving his family, often suffering loss by a semi-forced sale of his home; that he takes the risk of loss if he should go into business, etc.

After a careful survey of the matter and a consideration of the arguments, we have concluded that the request should be recommended as it is. We see no real difference in principle between using actual earnings which might have been made had the employee not been discharged, and using a set figure as the stipulated damages. True, earnings which he might have made may be difficult to ascertain over a period, but they may be fairly well approximated by several methods.

It is understood that "time lost" means not earnings for every day of his disseverance, but only for those days he would have worked had he not been discharged.

An examination of Exhibit "B" reveals that in every service, except passenger, where engines of weight on drivers of less than 170,000 pounds are used would the engineer earn more than the floor, or minimum of $8.79 per day. Consequently, we think this figure shrinks to comparative insignificance in the picture and the rule as proposed in the majority of cases makes the damage what the man would have earned on the days he would have worked. With the proposed rule granted it is open to obtain from the First Division an authoritative interpretation which will put this rule on the same level as rules similarly worded, some of which have been mentioned in the excerpt from Award 9554 above.

RECOMMENDATION:

The Board recommends that the proposed Rule as contained in Item 19, Case A-1371 be adopted.

CASE A-1371—ITEM 20

I

ORGANIZATION'S REQUEST

The Organization's request is to have Article 33, Section 6, Engineers' Schedule, changed to read as follows:

> Engineers in road service will not be required to be on the road more than six hours without being given the opportunity of securing a hot meal.
>
> When engineers desire to eat they will notify the Train Dispatcher in advance (if that is reasonably possible) where they intend to do so.
>
> After engineers have notified the Train Dispatcher of their intent to secure a hot meal, the Company representatives will not issue instructions to the contrary.
>
> Engineers will not be required to carry lunches. (Ex. "B", 11.)

Article 33, Section 6, Engineers' Schedule, presently reads:

> Engineers will be given a reasonable time to eat between terminals if hours on duty make it necessary or conditions of service permit.
>
> When men desire to eat, both train and engine crews should eat at the same point, notifying the Dispatcher in advance where they intend to do so. Where crews stop for this purpose, they will reduce the time of such delay to the minimum. (Ex. "A", 109.)

II

THE ISSUE

In addition to the proposed amendment of Rule 33, Section 6, Engineers' Schedule, there is involved in the present controversy also Rule 811, Rules and Regulations of the Southern Pacific Transportation Department, dated March 15, 1943, which reads:

> 811: Employees whose duties connect them with the movement of trains must not absent themselves from their places, substitute others, or exchange duties without proper authority. Trains must not be delayed for trainmen and enginemen to eat, without permission of the Chief Train Dispatcher. (Ex. 7, 134.)

The questions at issue are whether the ultimate control of the time and place where trains may be stopped to allow crews to eat shall be transferred from the Dispatcher or some other Company official to the engineers of such trains, and whether such transfer of authority can be justified on the grounds that the current rules and regulations are so restrictive as to cause physical discomfort and undue hardship to engineers and so adversely affect their health and efficiency.

III

POSITION OF THE PARTIES

1. Organization's Contentions:

The Organization contends that the proposed amendment to Article 33, Section 6, is necessary because the Carrier's interpretation of the existing Rule governing the matter under consideration is such that it is often impossible for engineers to secure a meal en route except upon concurrence by the Dispatcher, or some officer of the Company. It alleges that the Company's interpretation is arbitrary, permitting its officials to decide "if hours on duty make it necessary" for an engineer to eat and whether "conditions of the service" preclude the privilege of eating (Tr. 6561-6562). It is asserted that an illustration of this alleged abuse of official prerogative is presented in the case of Engineer H. W. Mercier, Portland, Oregon, because Mr. Mercier, who had eaten breakfast at 11 a. m. before coming on duty and had no opportunity to eat again until 8:30 p. m., disregarded the Dispatcher's instructions not to eat at Salem, but to go to another point for that purpose, was dismissed from the Carrier's service for alleged violation of transportation rules 801 and 811, the Organization asserts (Tr. 6562-6563; Ex. "OO"). A more recent case of similar nature, says the Organization, developed in the Bakersfield District where an engine crew was on duty 12 hours and 10 minutes without an opportunity to eat, because the Superintendent so decided. (Tr. 6565). It is stated that another engine crew in this same District was compelled to go at least 10 hours and 35 minutes without an opportunity to eat, because the Dispatcher determined this should be so (Tr. 6565).

The Brotherhood argues that the present proposal is necessary on the humanitarian grounds of physical comfort and welfare, to say nothing of the relation between meals at proper times and the resultant efficiency of engineers; that the current practices of the Carrier are not only not humane, but are predicated upon the outmoded theory that workers are servants or slaves and employers are masters (Tr. 6645, 6672-6673).

2. Carrier's Contentions:

The Carrier insists that the proposed amendment of Rule 33, Section 6, Engineers' Schedule, would impose a number of drastic obstructions upon the Company's control over movements of trains. Among other things, the proposed change fixes a definite time limit beyond which an engineer cannot be required to remain on duty without an opportunity to eat a hot meal, removes the provision that both train and engine crews shall eat at the same point, removes "conditions of service" as a factor in deciding whether it is expedient to allow meals to be obtained en route at a specified time or place, delegates to the engineer the prerogative of determining whether or not it is "reasonably possible" to notify the Train Dispatcher in advance of his intent to eat en route, nullifies the Dispatcher's control of train movements in that it deprives him of authority to countermand the intent of an engineer to stop and secure a hot meal at a time and place to be determined solely by the engineer, specifically prohibits engineers being required to carry lunches and removes the provision that when crew members stop for the purpose of eating they will reduce the time of delay to a minimum (Tr. 6573-6575).

The Carrier points out that the complexities of operating a railroad of its own magnitude, 83 per cent of whose main line is single track (5133 miles) and having some 1263 trains moving daily, make is imperative to avoid unnecessary and uncontrollable delays of traffic, that for this reason, if for no other, the Train Dispatcher must not be hampered in directing train movements; that delegation to the engineer of the prerogatives and arbitrary choices herein requested would make impossible any semblance of orderly dispatching of trains since train movements could not be planned in advance and no provision could be made for unexpected delays; that in the current emergency this would mean that military trains might seriously be delayed (Tr. 6580-6587; 6649; Ex. 144); that this would wreck passenger schedules and delay trains generally, and a chaotic condition would necessarily result (Tr. 6580, 6587); that the proposed amendment is, consequently, thoroughly impractical (Tr. 6635, ff).

The Carrier claims it has had relatively few complaints regarding running of men past 6 hours without providing them an opportunity to eat or obtain a hot lunch. Even in the few cases in which disciplinary action has been deemed necessary, such as those cited by the Brotherhood, only operating conditions of an urgent nature precluded this privilege (Tr. 6595-6596, 6622, 6642).

The coordination of traffic operations with available eating facilities so as to comply with the proposed amendment is practically, if not absolutely, impossible; that compliance with the proposal would necessitate not only the establishment of additional eating houses on a twenty-four hour basis, especially in desert territory where such facilities are now widely separated,

but also the construction of additional trackage to accommodate trains while crews are eating (Tr. 6636-6638).

The Company does not regard as unreasonable its present practice applying to road crews to request an engineer to carry lunch whenever called for work trains or some other service at a location where no eating facilities are available. This is a practice commonly found in many types of industrial enterprises. If the present request were approved, it is conceivable, asserts the Company, that in desert territory, the entire time available for services of the train would be consumed in the movement back and forth between the point where the services of the train are required and the point where eating facilities are located (Tr. 6640-6641).

Finally, declares the Carrier, the proposed amendment is a potential source of dissension among crew members. The situation of the engineers under the present Rule is no different from that of other members of the crew, yet no request has been received from such members, or any of their organizations. An engineer electing to take advantage of the amended Rule could disrupt the entire crew by stopping the train to eat at a point where the rest of the crew did not wish or could not afford the expense of eating. The net result, it is contended, would be a double delay because of eating at two points, as well as delay to other members of the crew in getting their meals, (Tr. 6645, 6650-6651).

IV

DISCUSSION AND RECOMMENDATION

This request is in the same category as Item 2 of Case A-1371, dealing with hot meals in yard service.

The positions of both parties are comprehensively stated above. We are not unmindful of the need for adequate meals at as nearly regular times as possible, but in the railroad industry great flexibility of operation must pertain. Exigencies arise which make it necessary for the Dispatcher to so control the movement of each particular train in relation to the movement of others on the road, especially in single-track operation. To permit the engineer of a single train, or even the whole crew of that train, to decide after a period of six hours, when they would eat, and then permit of no interference with that decision by the Dispatcher, granted he knew about it, might play hob with the operations over an entire line. Under the proposed rule the Dispatcher might not even know about the decision to eat. It might not be reasonably possible to notify him or in the judgment of the engineer might not be so. Such a rule would permit a single employee to visit chaos on railroad operations over the line in which that employee operated.

In this request, as in others, we have had to balance the benefits which might be expected to accrue to the men by granting the request with the disadvantage in railroad operation. Without any disparagement of the benefits of hot meals at intervals not too long apart on the comfort and welfare of the men, we think they must give way to the paramount consideration of efficient railroad operation.

The Carrier states that it notifies the crew wherever possible when it can foresee conditions which would make it advisable to carry lunches. It does not require an engineer to carry a lunch, but it apprises him, when possible, of the conditions which would make it desirable for him to do so.

We think with a disposition to cooperate, the present Rule is adequate. We find no conflict between it and Transportation Rule 811. There is nothing in the present Rule which states that the Dispatcher cannot countermand an expressed intention to eat at a certain time if he finds conditions will not reasonably permit it. In fact, that would seem to be the reason why the Dispatcher should be notified. If the men think that the Dispatcher is arbitrary or for trivial reasons vetoes the decision to eat at a certain point, or at a certain time, the men may make complaint and ask for an investigation. We do not get the impression that inordinately long periods between meals are the usual thing, but rather the exception. In every walk of life, even in office work, there are times when men from the bottom to the top are required to assume for limited periods an overload, or depart from a desired routine. Unless such incidents become frequent no permanent harm is visited on the parties involved, if they are in normal health. The habits of most men are such that they may take on periods of intensity for a limited time when conditions require.

We think the request under consideration is entirely impracticable and cannot be adopted.

RECOMMENDATION:

The Board recommends that the proposed rule embodied in Item 20, Case A-1371, be not adopted.

CASE A-1516

I

ORGANIZATION'S REQUEST

Included in the present case are two requests which the Organization insisted on treating separately, but which the Carrier insisted should be dealt with jointly. They are the result of the Organization's desire to amend Section 5, Article 30, including questions 1 and 3, Article 30, of the Agreement covering engineers, to read as follows:

> Section 5 (a). Engineers in like service who are run around through no fault of their own, at any terminal, shall be allowed *100 miles for each time run around* and stand first out; run-arounds to be paid at the rate applying to engine he should have been used upon.
>
> Section 5 (b). In case extra or pooled freight engineer not deadheaded from terminal to any point for service to which entitled and another engineer is used, such extra or pooled freight engineer will be allowed the same earnings as paid the engineer who performed the service, including overtime.
>
> NOTE.—Proposed Section 5 (b) to take the place of Question (1) following Section 5, Article 30. Question (3) page 82 of the Agreement, to be eliminated. (Ex. "B", 11-12.)

The present Rule, which the Organization seeks to amend, reads as follows:

> Engineers in like service, who are run around through no fault of their own, at any terminal, shall be allowed 50 miles and stand first out; if not called for service within the limit of eight hours, 100 miles will be allowed and stand last out. Runarounds will be paid at the rate applying to engine he should have been used upon.
>
> Question: (1) In case extra or pooled freight engineer not deadheaded from terminal to any point for service to which entitled, how should he be compensated?
>
> Answer: (a) If there was not sufficient time and available train service on which to have deadheaded the extra or pooled freight engineer for service to which entitled, from terminal to point where service was performed, no allowance will be made to extra or pooled freight engineer who stood for service.
>
> Answer: (b) If investigation develops that there was sufficient time and available train service on which to have deadheaded extra or pooled freight engineer entitled to the service, such extra or pooled freight engineer will be allowed the same earnings as paid the engineer who performed the service, including overtime.
>
> Question: (3) In case an engineer is run around by three different engineers within a period of eight hours, is he entitled to 50 miles for each runaround, or a total of 150 miles?
>
> Answer: No, engineer runaround as above and not called within the limits of eight hours, would be entitled to 100 miles and go "last out." (Ex. "A", 81-82.)

II

HISTORY OF THE CASE

The Organization's request to amend Section 5, Article 30, of the current Agreement covering engineers was sent to the Company on May 11, 1943. The request was declined by the Carrier. Consequently, the Organization sought the services of the National

Mediation Board, which docketed the instant request as Case No. A-1516. Various attempts at mediation failed. The Company took the position that Case No. A-977 and the present case (No. A-1516) were so closely related as to require simultaneous consideration. It appears that Case No. A-977 grew out of the fact that on June 19, 1941 the General Chairman of the Brotherhood served thirty days' notice on the Company of the Organization's intent to abrogate and withdraw the letter jointly signed by the General Chairmen of the B. L. E. and B. L. F. & E., dated March 22, 1918, (Ex. 75, Sheet 3). The Company declined approval of such abrogation or withdrawal of said letter, and applied for mediation. The National Mediation Board docketed the case as Case No. A-977. The Board on June 13, 1944 proposed arbitration in both cases, A-977 and A-1516. The Company agreed to this proposal. The services of the Board were terminated in both cases on June 24, 1944, and August 22, 1944, respectively, all efforts at settlement having failed.

The Company continued to insist that the question at issue in Case No. A-1516 relates to compensation to engineers who have been run around, whereas the question involved in Case No. A-977 is the nature of a runaround. Because of the alleged obvious relatedness, the Company insisted that the two cases be heard concurrently (Tr. 3384). However, Case No. A-977 is not before the present Emergency Board, which heard Case No. A-1516 at San Francisco, May 14-15, 1945. Presumably Case No. A-977 is to receive the attention of the First Division of the National Railway Board of Adjustment, since a claim is there involved.

III

THE ISSUES

The issues in the instant case are, *first,* whether engineers in like service who are run around through no fault of their own, at any terminal, shall be allowed 100 miles instead of 50 miles and stand first out, said allowance to be paid for each time they are run around; and, *second,* whether an engineer in extra or pooled freight service not deadheaded from a terminal to any point for service to which he is entitled and his run is given to another engineer said displaced engineer shall be allowed the same earnings, including overtime, as paid the displacing engineer.

Under the proposed amendment an engineer run around would be allowed 100 miles for each time run around and would stand *first* out, whether called for service or not within any certain period.

The principal modification in rules which would result from the second part of the instant request is that the provision for investigation of failure to deadhead an engineer from terminal to point of service is abolished.

IV

POSITION OF THE PARTIES

1. *Organization's Contentions:*

(a) *Concerning Proposed Section 5 (a)*: The instant request relates to engineers assigned to regular runs, pooled freight engineers, and engineers assigned to the extra list in regard to which the practice of "first in first out" has been established, according to Article 30, Section (2), (b), and Section 3 (a) of the Engineers' Agreement (Ex. "A", 76-77; Tr. 3233).

The Organization insists that it seeks merely to preclude the alleged obvious inequities which now exist, as exemplified in the Taylor incident hereinunder set out, and to introduce the principles of Rule already applied on other railroads, especially the El Paso and Southwestern (Tr. 3236, 3248). It appears that in the illustrative case, Engineer G. L. Taylor of the Ogden District arrived at Montello at 10:45 p. m., November 23, 1942, but did not depart until 10:45 a. m. on November 24, or 11 hours and 55 minutes after his arrival, in the meantime being run around five times in consequence of which he sought penalty compensation of five 50-mile runarounds (Ex. "O", Tr. 3236-3237).

The Brotherhood contends that the proposal to substitute 100 miles penalty compensation in lieu of the current 50 miles and and have it cover each runaround is not a new departure in railroad employee agreements; that the Engineers' Agreement in force on the El Paso and Southwestern, which now is a constituent part of the Southern Pacific's Pacific Lines, provides the following:

> At terminals, engineers will be allowed 100 miles pay in case they are run around in class of service to which assigned. (Article 17, Section 1, Engineers' Agreement, E. P. & S. W., p. 24; Tr. 3248-3249.)

That Section 2 of Article 17 of the same Agreement reads as follows:

> If run around more than once the following rule will apply:
>
> "When engineers have been roun around at terminals, they shall notify the roundhouse foreman in writing and after receipt of such notice by the roundhouse foreman, or his representative, if they are run around again, 100 miles will be paid such engineer for each runaround after such notice has been received." (Tr. 3248)

The Organization contends that in the instant proposal it seeks merely to discourage the Carrier from doing something which can easily be avoided, because the Dispatchers in a particular district possess advanced information on train movements, consequently it is possible to tell in advance when an engineer may be scheduled for a run (Tr. 3523-3524).

(b) *With Regard to Proposed Section 5 (b)*: The Organization's primary contention is that the burden of proving whether there was sufficient time and available train service on which to have deadheaded an engineer to point of service should not be placed upon the engineer involved, as it allegedly is under the existing rule (Tr. 3295-3296); that the elimination of Answer (a) to Question (1) following Section 5 of Article 30 in Engineers' Agreement will substitute certainty of penalty compensation for the present uncertainty and remove from complainant engineer the responsibility for proving that he is entitled to equivalent time, including overtime, paid to the engineer who performed the service in question (Tr. 3295-3296).

In illustration of this primary contention, the Organization cites the case of Engineer J. Sherrod of Ogden, Utah, who was an engineer assigned to extra passenger service at Ogden. A claim was filed by Engineer Sherrod because the Carrier failed to deadhead him from Ogden to Carlin for service to which he was allegedly entitled on Train 27, the Overland Limited, which was doubleheaded from Carlin to Ogden, a pool freight engineer at Carlin being used in lieu of Engineer Sherrod for that service (Ex. "Q"; Tr. 3296-3298). It is contended that the burden of proving that there was sufficient time to deadhead the "first out" engineer is placed on the engineer; in the case of Sherrod, on him. The Organization seeks to give the man standing "first out" on the extra or pooled freight list the compensation he would have earned had he been deadheaded and taken the run, regardless of whether or not there was time to deadhead him (Tr. 3298). The obvious inequity in the Sherrod case was due, the Organization insists, to the fact that the engineer was compelled to assume responsibility for proof, although, it is claimed, the Carrier had plenty of advance notice with regard to train movements out of Carlin to Ogden, and easily could have deadheaded the engineer to point of service to which entitled (Tr. 3298, 3301, 3446).

The proposed amendment will result in an absolute rule which will require the Company to pay regardless of insufficient or unavailable trains for deadheading an engineer to point of entitled service, thus eliminating all elements of uncertainty and indefiniteness, the Organization urges (Tr. 3495).

2. Company's Contentions:

(a) *With Regard to Proposed Section 5 (a)*: The Carrier insists that the Organization's proposed amendment to the runaround will impose a greatly increased financial burden upon it (the Carrier) because whereas currently the Rule provides for a 50-mile runaround penalty within a period of 8 hours, the amended Rule requests a runaround for each time runaround to be paid at 100 miles instead of 50 miles (Tr. 3386).

Moreover, the Carrier contends, the instant request of the Organization contemplates payment by the Company as a penalty, or as stipulated damages, the full amount of a day's compensation to an engineer run around for which the Company receives no service whatsoever, despite the fact that the increased penalty arises out of circumstances that, because of the very nature and exigencies of railroad operations, cannot be foreseen or avoided. It is necessary to remember in this connection, the Carrier urges, that considerable distances separate the various points in its several terminals at which trains may originate, consequently it is entirely impractical to exchange engineers on different trains which may be called to depart from the terminal after the engineer who is first out has reported for duty (Tr. 3388).

Directly related to the immediately stated circumstance of train departures, the Carrier is careful to point out, is the basic difference between the time of going on duty and the time of departure. The Carrier completely disagrees with the contention of the Organization (Ex. "O") that runarounds originate at the time of departure from the terminal, not the time of going on duty. The engineer's compensation starts from the time he assumes duty in response to the call and not from the time of his departure, the Carrier indicates (Tr. 3369-3371). Consequently, says the Carrier, in determining whether an engineer has been run around, it is the time that he goes on duty, not the time of departure which is determinative (Tr. 3370).

If the Organization's proposed amendment to the runaround rule were accepted, it is not unlikely, the Carrier points out, for an engineer's penalty compensation under the revised Rule to exceed the amount of his compensation for actual service to the Company (Tr. 3390). Under the Rule currently in force, an engineer who is run around does not obtain 100-mile penalty compensation unless the Company fails to call him for duty within a period of 8 hours. The proposed amendment would impose a penalty of a full day's pay for each time where a runaround occurs. Presently the Company can avoid the 100-mile penalty if it rectifies its error within the limit of 8 hours, and the engineer consequently obtains only the one 50-mile penalty.

Under the proposed new rule an engineer would not only have the penalty mileage increased from 50 to 100 miles, but this increased penalty compensation would be multiplied by the number of times he is run around, consequently his penalty compensation might easily exceed his normal service compensation, says the Carrier. This, the Carrier asserts, would create an anomalous situation (Tr. 3389-3391).

The Carrier insists that in citing the runaround rule of the El Paso and Southwestern owned by the Southern Pacific Company, the Organization fails to point out that while this rule is more favorable to engineers than the corresponding rule on the Pacific Lines, other rules in the E. P. & S. W. Agreement are definitely less favorable and the Brotherhood has manifested no inclination to substitute that Agreement for the one involved in the instant request (Tr. 3393).

(b) *With Regard to Proposed Section 5 (b):* The Carrier asserts that Organization's proposal 5 (b) completely disregards the practicalities of railroad service which frequently result in the unbalance of engineers at opposite terminals. This unbalance means that if trains are moved at all, it often is necessary to use the services of an engineer who may be available, but not assigned to handle a particular train (Tr. 3392). The engineers are already sufficiently protected and the Company penalized in such circumstances, the Carrier insists, because if, through oversight or negligence it fails, in view of sufficient information and available train service, to deadhead the engineer entitled to the work to the point where work originates, the penalty is severe. That is, the Carrier, under existing rules, must pay such an engineer the same earnings as paid the engineer who performed the service, including overtime (Tr. 3391-3392; also see Organization's Ex. "A", 81-82).

It would be grossly unfair, the Carrier contends, to dispossess the Company of the existing privilege of an investigation. Because of conditions and factors quite beyond its control, the Company insists, it is not possible always to anticipate just when an engineer or a number of engineers may be needed at some particular point of service; consequently, in these circumstances it frequently is imperative to use the services of engineers who are available. Dislocation of train schedules through no fault of the Carrier is a frequent occurrence, hence an investigation to determine responsibility is a legitimate privilege. The instant rule proposed by the Organization, the Carrier asserts, would give no consideration to the unforseeable circumstances just recited, would deny the privilege of inquiry, and exact a penalty regardless of the nature of contributing conditions and the degree of responsibility (Tr. 3392-3393).

The Company states that it is not possible always to provide sufficiently in advance of train movements the information necessary to deadhead from terminals to points of service the engineers entitled to service on the first-in first-out basis (Tr. 3393). Each Division is a separate operating unit of the railroad under the jurisdiction of its superintendent, and has at least one, sometimes more than one, Dispatcher. The Chief Dispatcher is responsible for the trains run in his district, and day by day local circumstances necessarily influence the running of said trains, the Carrier states; that is, such conditions as snow storms, wind, rains, clear weather, and slides, determine the type of power, number of cars, and personnel used in particular train movements. The Carrier asserts that the Dispatcher in one district cannot anticipate what in the way of trains he will receive day by day from the Dispatcher of another district (Tr. 3422, 3428, 3431, 3432). It is not possible, the Carrier contends, to determine with approximate, much less absolute, accuracy the time of arrival of freight trains (Tr. 3455). Under such uncertain conditions, it is not always practicable to deadhead an engineer entitled to service to the point away from his terminal where said service is to be performed. Consequently, the Carrier urges, the Company should not have to pay penalty compensation without the opportunity of an inquiry to determine whether the Carrier was at fault, that is, whether an engineer entitled to service was available and whether there was sufficient time in which to deadhead said engineer to point of service.

V

DISCUSSION AND RECOMMENDATION

We think Section 5 of Article 30, Engineers' Agreement, as now interpreted results in unfairness to the engineers in that the Carrier may cause a runaround and perhaps deprive the man standing first out of a preferred run and then because of the interpretation placed on this Section by Question (3) and its Answer he may be run around with impunity for a period of eight hours and given only 100 miles and made to stand last out. Section 5 read reasonably and literally would put a man suffering a runaround first out at the same time giving him 50 miles; then being first out, if there were no other service to be preformed for eight hours, he could be given 50 miles more and put last out. But Question (3) and the Answer actually permit the Company to run around the first-out man who is thereby still first out, give him 50 miles and then run as many others around him in the eight-hour period as it desires and pay him only 50 miles more. We think this interpretation put on Section 5 by Question 3 and Answer thereto works an injustice on the engineers. We think each time a man is run around he should receive a stipulated sum regardless of what happens within any designated period thereafter, but we think that payment of 100 miles for each run around is too much. At times a man will not be compensated for the loss of service someone else took from him out of turn, but at other times he may get as good or better run within a very short time after the one he missed. Fifty miles was evidently adopted on the principle that it would average up. A study over a period of time as to the value of the work which run-around engineers missed as compared to the value of the work which they obtained on next call would give us a more scientific basis for the determination of whether fifty miles constituted a fair average of the damage suffered. But we do not possess the results of such a study for it does not appear that any has been made.

We think the proposed Section 5 (a) should be adopted with fifty miles substituted for 100 miles.

As to the proposed Section 5 (b): It appears to us that the Carrier stands on solid ground in its argument in reference to this proposed change. Economy and efficiency in railroad operation, it would seem, would be best served if at a point outside of the place where a pool or extra list were left, any man available at that point could be used regardless of the first-in first-out rule, but such would in part deprive the men of the benefit of the first-in first-out practice. Consequently even though there is available at the place of origin of a run an engineer not first out on the board, he must give way to one prior on the list, when such prior man may be deadheaded in time to take the run (See Question (1), Answers (a) and (b) appended to Section 5 of Article 30). To require the Carrier to pay double for the service, regardless of whether there was sufficient time and available railroad means to get a man to the point of use, appears to be too drastic and absolute a cure for the alleged difficulty which the Organization states it necessarily experiences in providing proof before it can show that sufficient time and available train service existed. We do not think the difficulties of proof are as great as the Organization thinks. There is nothing which requires the man who claims a runaround from presenting facts to show there was sufficient time to deadhead him. He may present his claim and call for an investigation under subsection (b) of the bold-faced type of the Answer on page 82 of the Agreement. It would then be for the Carrier to investigate and present the facts which would in turn be subject to examination and question by the claimant. To require the Carrier to pay double in every case where the man first out could not get to the point of use in time would solve the matter for the men, but visit on the Carrier an undeserved penalty for failing to use a man when circumstances would not permit of his use.

The tolerance permitted by the exception to the obligation to compensate for failure to deadhead contained in Question 1 and Answer thereto in Section 5, Article 30, is reasonable.

RECOMMENDATIONS:

The Board recommends that:

(1) In place of existing Section 5 the following be adopted:

Engineers in like service who are run around through no fault of their own, at any terminal, shall be allowed fifty miles for each runaround and stand first out; runarounds to be paid at the rate applying to engines upon which they should have been used.

(2) That proposed Section 5 (b) be not adopted. (3) That Question 3 and Answer thereto appended to existing Section 5, Article 30, of the Agreement be eliminated.

CASE A-1594

I

ORGANIZATION'S REQUEST

The Organization's request in the instant case is to amend Article 31, Section 2, Engineers' Agreement, by deleting therefrom the following:

Oakland and Roseville-Tracy-San Jose-San Francisco, (Ex. "A", 88)

and insert in lieu thereof the following:

1. Western District freight pool, Oakland-Roseville, Oakland-Tracy, Oakland-San Jose; Home Terminal, Oakland. Away from Home Terminal, Roseville, Tracy and San Jose. Work to be performed by that pool as at present.
2. Western-Coast District freight pool to cover interdivisional pool freight districts, San Francsco-Oakland, San Francisco-Tracy; Home Terminal, San Francisco. Away from Home Terminal, Oakland and Tracy.

Engineers in pool No. 2 will work independently of engineers in Western District No. 1, and will perform pooled freight work on interdivisional district, San Francisco-Oakland, San Francisco-Tracy, excluding any service on trips not overlapping the seniority district. (Ex. "B", 12-13.)

The present Rule (Article 31, Section 2) reads:

Engineers assigned to main line pooled freight service will be assigned as follows:

"Between: xxxxx
xxxxx
Oakland and Roseville-Tracy-San Jose-San Francisco." (Ex. "A", 88; Ex. "B", 13.)

II

DESCRIPTION OF THE OPERATIONS INVOLVED

The operations covered in the present care are specifically set forth by the Carrier as follows:

(a) The present arrangement, inaugurated about 1915 and carried in successive reprints of the Agreement since 1917 as a portion of Article 31, Section 2, contemplates that a pool of engineers with home terminal at Oakland shall perform through freight and other pool service in the district between Oakland, San Francisco, Tracy, San Jose and Roseville. At present this pool has about 55 engineers, only 7 of whom are from the Coast Seniority District.

(b) Under the present arrangement, and effective in 1919, engineers in this pool arriving in service at San Francisco or Oakland have been treated as if arriving at their home terminal, and are then available in order for service out of either point. This phase of the arrangement was made effective at the request of the Organization representatives. (Tr. 3196)

A diagrammatic description of the existing arrangement and of current and potential operations under Pool No. 1 and Pool No. 2 as set forth in the Organization's proposal in this case, is found in Exhibit "N", 8, 9, and Exhibit No. 55.

The Western Seniority District, according to the current agreement covering engineers, extends between the following points: Oakland and Sacramnto, Oakland and San Jose and Santa Clara and Redwood, Oakland and Tracy. The Coast Seniority District extends between San Francisco and Santa Barbara. Thus runs between San Francisco and Oakland-Tracy-San Jose-Roseville involve interdivisional runs between the Coast and Western Divisions and in the case of Oakland and Roseville interdivisional runs between the Western and the Sacramento Divisions.

III

EVOLUTION OF THE WESTERN DISTRICT COMBINED POOL

In the background of the instant dispute are certain operating changes and agreements which are noteworthy.

1. In September 1910 the Company began operations over a newly constructed line from Redwood Junction, on the Coast Division, to Newark, on the Western Division, over Dumbarton Bridge, which crosses the southern end of San Francisco Bay. Thereafter, trains were operated between San Francisco and Oakland and Tracy via this bridge. In these train movements the engineers of both the Coast Seniority District and the Western Seniority District were involved.

Section 15, Article 32, of Engineers' Agreement with the Carrier, effective March 1, 1908, had provided that: "When established runs are so changed as to cause engineers to run over more than one district or a part thereof, vacancies or open runs shall be filled in such service in proportion to the mileage of each district over which the run extends" (Tr. 2814). Because of this agreement, engineers holding seniority on the Coast Seniority District were assigned in pooled freight service between San Francisco and Tracy, operating between Redwood and Tracy, on the Western Seniority District. The separate pooled freight assignment covering Western Seniority District engineers operated in part between Oakland and San Francisco, which called for a compensating movement on the Coast Seniority District between Redwood and San Francisco (Tr. 2814-2815).

2. The separate pool freight assignment of the Coast Seniority District between San Francisco and Tracy was abolished as of June 1, 1915, the work previously handled in this assignment thereafter being included as part of the Western Seniority District pooled freight assignment of engineers and a number of Coast Seniority District engineers were assigned to the Western Seniority District pool in accordance with Article 32, Section 15, of the Engineers' Agreement (Tr. 2815). The October 1, 1918 reprint of said Agreement ratified this interdivisional assignment of engineers, and reads as heretofore set forth.

This provision (Article 31, Section 2) has remained unchanged in every re-issue of the printed Agreement covering engineers since October 1, 1918, including that one which became effective May 1, 1942 (Tr. 2816).

3. On March 26, 1919 the local chairman of the B. L. E. on the Coast and the Western Seniority Districts requested that henceforth Oakland and San Francisco be regarded as one and the same terminal for purposes of application of the principle of "first-in first-out" involving engineers in the assignment under consideration. That is, engineers of these two Seniority Districts, on their arrival in San Francisco, would be marked on the pool freight list of engineers at Oakland in lieu of being shown on the list at San Francisco, and that said engineers would be called for subsequent service either out of Oakland or San Francisco on the basis of their position on the engineers' list at Oakland. At the request of the representatives of the Firemen's Organization the identical arrangement was made applicable to firemen. This arrangement, including the three-hour call at Oakland for service to be performed by engineers at San Francisco, was put into effect on May 21, 1919, and has remained in effect ever since (Tr. 2818; Exhibits 56-63, inc.).

4. When the arrangement just described was introduced in May, 1919, the Company provided free transportation to engineers on its own ferry service between San Francisco and Oakland. Even after discontinuance of ferry service on account of completion of the trans-bay bridge, engineers traveling between these two cities under the above arrangement were provided transportation at the Company's expense on trains of the Interurban Electric Railway Company over said bridge (Tr. 2818-2819). When this line was abandoned, the Company continued to furnish the engineers transportation on the Key System trains and busses (Ex. 64; Tr. 2819).

On October 4, 1943 the Organization served formal notice under the provisions of the Railway Labor Act of desire and intent to amend Article 31, Section 2, of Engineers' Agreement, by substituting the instant request. The Carrier denied this request (Ex. "N", 5). The matter took the usual course through negotiation, attempted mediation by the National Mediation Board, suggested arbitration by that Board, with declination by the Carrier, and finally reached this Emergency Board which heard the case in San Francisco, May 9-14, 1945.

IV

THE ISSUE

The issue in the present case is whether *two* freight service pools, comprising: as No. 1 Pool, Western and Sacramento engineers, working between Oakland and Tracy, Oakland and San Jose, Tracy and San Jose, and Oakland and Roseville; and as No. 2 Pool, engineers of both the Coast and the Western Seniority Districts, working between San Francisco and Oakland and between San Francisco and Tracy, shall be created in lieu of the existing *single* pool of engineers with home terminal at Oakland, performing through freight and other pool service in the district between Oakland, San Francisco, Tracy, San Jose and Roseville.

Central to the discussion of this issue is the fact that under the current arrangements, in effect since 1919, engineers in the present single pool who arrive in service at San Francisco or Oakland are regarded as if arriving at their home terminal, consequently as available for service in order of first-in first-out from either point. Presently, there are said to be about 55 engineers in this pool, of whom only 7 are from the Coast Seniority District.

In consideration of the central issue, it is also necessary to bear in mind the fact that under the proposal of the Organization an engineer assigned to *one* of the two pools therein provided, would not be available for service performed by the *other* pool (Ex. "N", 8-9; Ex. 55; Tr. 3196-3197). The fundamental inquiry is whether the advantages that will allegedly accrue to certain engineers, particularly those of the Coast Seniority District, are of sufficient importance, quantitatively and qualitatively, to compensate for the anticipated loss of operating flexibility and efficiency in the territory under consideration.

V

POSITION OF THE PARTIES

1. *Organization's Contentions:*

The Organization rests its case largely upon the contention that the engineers here involved have a fundamental right to bargain for arrangements which will minimize the amount of time away from their homes in performance of their work duties and, consequently, to reduce the expense necessarily involved in said away-from-home service (Tr. 3172).

The Organization contends that the present freight pool service arrangement provided in Article 31, Section 2, of the Agreement covering engineers results in an unreasonable amount of time away from home and considerable expense to the men concerned. This is especially true of engineers from the Coast Seniority District, who frequently are forced to spend from three to eight days away from home (Tr. 2714, 2742, 2747). This situation results from the fact that the Carrier can and does under the current arrangement, assign men to service that keeps them away from their home terminals for greatly extended periods. Moreover, the Organization asserts, engineers in the existing pool operate over the lines of three seniority districts, namely, the Coast, the Western and the Sacramento districts. (Tr. 2553) Note: It developed in the testimony that there was in the large Western District pool a sub-pool used only on the Oakland, Martinez, Roseville run.

Convenience of operation is, of course, the basic cause of these interdivisional runs. The Organization argues that the compensatory system, which was devised to safeguard the seniority rights of engineers in the divisions embracing the overlapping runs, was never intended to allow a Carrier to work engineers as it sees fit without regard to their opportunities to return home at reasonably frequent intervals (Tr. 3173). Consequently, there is sought, through the instant request, an approach to the ideal arrangement under which engineers may run over one piece of track between two terminals, and thus be away from home no more than one night instead of being shunted around from one away-from-home terminal to another before being returned to the home terminal. Such an arrangement is illustrated in the case of Sacramento engineers who run Roseville to Oakland, Oakland to Roseville, and return, a straightaway assignment between two terminals, the Organization points out (Tr. 3176). It is also exemplified in the Portland Seniority District where pools are established for a single run. If men in that district were in a pooled freight service as on the Western Seniority District, consisting of only one big pool, they would be running all over the territory (Tr. 3177). In fact, in the Portland Seniority District, which is less complex than the Western Seniority District, there are six freight service pools, the Organization states (Tr. 2570).

The Brotherhood contends that the requirements of the pooled freight service considered in the present case impose burdens and dangers which can be obviated, if not avoided, by the instant proposal; that there is too much track and too many track conditions to become familiar with, and that accidents are unavoidable under such circumstances (Tr. 2582). Not only must the men qualify for the extensive runs involved, but if they bid in a run they must qualify on their own time (Tr. 2582, 2603). Specifically, Coast Seniority District engineers are called on to operate over the entire Western District, hence must qualify to operate over 382 miles of strange track, in addition to 580 miles on their own Coast Division track (Tr. 2652). Compared with the present 382 miles, the new pool provided in the instant request would call for only 81 miles of track in the Western District for the Coast engineers to become familiar with; that is, about 55 miles from the middle of Dumbarton Bridge to Tracy, and about 31 miles from the middle of the Dumbarton Bridge to Oakland (Tr. 2680). With regard to the hazards involved in operating over so extensive trackage, as the present pool requires, it is sufficient, the Organization believes, to point out that already one accident has resulted from an engineer's unfamiliarity with the track conditions (Tr. 2678).

The Organization counters to the Carrier's argument of increased mileage earned (so-called "two and three baggers") allegedly that from the existing pooled freight service earnings are not adequate, even if real, to warrant the sacrifices attendant upon the inevitable away-from-home periods of service. Moreover, the so-called two, three and four baggers are more imaginary than real, the Organization asserts, since very few men exceed the 3800 mile limit, even in the present emergency when work is abundant (Tr. 3193-3194). Although the instant request seeks to benefit the Coast District engineers, it is notable, the Organization urges, that a referendum of all engineers gave an overwhelming majority in both Districts in favor of the proposed change.

It is obvious, therefore, the Brotherhood argues, that the engineers generally believe the instant proposal desirable (Tr. 2579, 2785-2786).

There is nothing in the instant request, the Organization insists, which to any unusual degree dislocates operating balance and flexibility, nor that would incur extraordinary additional expense of operation. It is said that balanced operations and complete flexibility are never the normal situation in railroading (Tr. 3192-3193). With regard to additional cost, it is argued that the maximum extra cost of six more deadheads per week would total only about $3120 a year, and perhaps one additional student fireman (Tr. 2974, 3172-3173, 3193). Moreover, the Brotherhood urges, there is no shortage of engineers to complicate the situation; the same number of engineers will be available under the proposed new pool plan as before (Tr. 2965, 3069, 3182-3186.) In case no engineer is available at Tracy, the Company can use one from the "big pool" if time does not permit the deadheading of a member of the "little pool" (Pool No. 2 of the preferred rule) from San Francisco (Tr. 3180-3181, 3190).

Finally, the Brotherhood points out, the Rowland-King Agreement (March 26, 1919 and May 6, 1919, referred to above) was not approved by the Organization's General Chairman and was, therefore, not an Organization agreement. Moreover, it was formally canceled for the engineers on October 6, 1943, by notice served.

2. *Carrier's Contentions:*

The Carrier's opposition to the Organization's instant request is based primarily upon the allegation that acceptance of the proposal would destroy the flexibility and efficiency of current operations and the existing availability of manpower. The area involved is, the Carrier states, extremely important in normal times, and is even more so in the present war emergency; it is among the most congested of the Company's lines.

The district under consideration, the Company indicates, covers a network of lines extending between Oakland, San Francisco, Roseville, San Jose and Tracy, and includes most of the rail lines serving the vital ocean terminals at San Francisco and on the east shore of San Francisco Bay. Located in this area are various naval and military camps, depots, arsenals, yards, many important industries, and the heavily populated centers of San Francisco, Oakland and other Bay Cities (Tr. 3196-3197). The Carrier further states that these lines are an essential part of the important routes over which traffic is handled to and from and between other major ports and industrial centers, especially Los

Angeles, Portland, Seattle, and other principal cities in the Pacific Coast and Intermountain States (Tr. 3197-3198, 3097-3104; Ex. 55).

Retention of the present elasticity of operations in this strategic area afforded by the ability of the Company to use, without restriction, any one or more of the alternate routes for maintaining an uninterrupted flow of traffic, is of supreme importance (Tr. 3104-3105; Ex. 55). It must not be forgotten, the Company insists, that traffic on these lines will increase greatly in the immediate future, since fully 60 per cent of all off-shore traffic for the Pacific theatre of war will be handled from the port of San Francisco (Tr. 3106).

The Carrier insists that the disadvantages to both the Company and the engineers involved would definitely outstrip any alleged advantages. The restriction of the availability of engineers issuing from acceptance of the Engineers' proposal would, the Carrier contends, increase the deadheading of engineers to outside terminals in the area involved, as well as the time during which other engineers would be held idle at such terminals. Crews would have to be split up at outside points, because engineers could not return on trains for which the remaining members of the crew would be qualified; trains otherwise ready to move would be delayed because of the lack of an available engineer; confusion and delay would seriously hamper the Company's efforts to provide speedy, efficient and economical transportation which the public and the Unted States Government require, especially in the present critical period. The whole operating structure would thus be thrown out of balance, the Carrier maintains (Tr. 2951, 3198, 3202, 3221, 3226). The disadvantages here detailed would not, the Company urges, be obviated by the use of Section 4, Article 31, of the Engineers' Agreement, because said Section is applicable only when no other engineer is available, and then only by incurring deadhead payments (Tr. 3201).

The Carrier declares that there is neither reason nor evidence to support the Brotherhood's claim that significant advantages would accrue under the instant proposal. Safety would not be increased appreciably, since the only accident ever reported in this connection was due not to the engineers unfamiliarity with the road, but his error in misjudging braking distance; the periods away from home are not now so frequent nor so extended as to constitute a serious problem. The Carrier further contends that even granting that away-from-home periods for the Coast engineers would be minimized under the proposal, Western District engineers would consequently suffer because they would be denied the privilege of returning to San Francisco in service; in sacrificing the opportunity to make extra runs in the form of two, three and four "baggers", the engineers would lose financially (Tr. 2666-2667, 2936, 2957). Engineers prefer the present plan, or they would bid out of the Western District pool, the Carrier believes (Tr. 3138).

The Carrier answers that the Organization's proposal cannot be supported on the basis of an analogy between its provisions and operating arrangements in other Divisions or Seniority Districts, such as the Portland Division, where the Company maintains several through freight pools for engineers in a single Division. Complete identification of different Divisions or Districts is neither possible nor valid, the Company urges, because the character of the lines over which traffic moves, the types of service to be performed, and numerous other conditions involved are basically different (Tr. 3200).

Finally, the Carrier contends, that there is no evidence that the present pool arrangement violates Section 15 of Article 32 of the Agreement covering engineers. If there were, the Carrier argues, this case should and would be before the N. R. A. Board, and the Organization would not have permitted the present pool arrangement to co-exist with said Section 15 for a period of 30 years. In fact, the Carrier insists, any failure to comply with Article 32, Section 15, must be attributed to the Brotherhood, because that agency has full control, subject to the needs of the service, over the apportionment of mileage between seniority districts (Tr. 3200).

VI

DISCUSSION AND RECOMMENDATION

A glance at page 8 of Exhibit "N" (map), or Exhibit 55, reveals that there is a network of comparatively short runs all revolving about Oakland. Section 2 of Article 31 permits of one pool covering the entire Western Division (including branch lines) and indeed some extra divisional mileage in the Coast and Sacramento Divisions. This results from the agreement that main line pooled freight service may be established to cover runs from Oakland and Roseville-Tracy-San Jose-San Francisco. Roseville and San Francisco are points outside of the Western Division. Such interdivisional freight service is covered by Section 15 of Article 32. The Organization keeps track of the interdivisional mileage. The number of engineers from the Coast and Sacramento Districts to be included in the Western District pool are regulated up and down after periodical accountings so as to balance the mileage. But since the Carrier can use an engineer from Oakland to

Tracy, and then from Tracy to San Jose, or Tracy to Martinez, or Tracy to San Francisco, or from Oakland to San Jose, and then from San Jose to Tracy, or San Francisco via Niles, i. e., on intermediate entirely away from home territory, it lends to flexibility of operation.

The proposal to establish another pool by running engineers from Oakland to Tracy, or Oakland to San Francisco, or San Francisco to Tracy, and vice versa, would, of course, still leave this minor pool as an interdivisional one requiring the use of Coast District Engineers to compensate for the mileage run by Western District engineers between Dumbarton Bridge and San Francisco. It is claimed, however, that the establishment of this little pool would bring the engineers home oftener because they could not be used around the network before getting home.

It would certainly do this for the engineers used in this proposed little pool, but it would lessen the opportunities for the engineers of the Western District used in the #1, or larger pool, because for them San Francisco would be eliminated as a terminal. Thus the engineers in the larger pool would be denied the opportunity to get to their home terminal Oakland via San Francisco. It is doubtful whether the benefit to the Coast engineers used on interdivisional service in the proposed #2 pool would compensate for the loss of opportunities to get home suffered by the Western Division engineers because of the resulting elimination of San Francisco as a constructive home terminal, which it now is, under Rowlands-King Agreement of March 26, and May 6, 1919. But since we are informed that the majority of engineers in both Districts have voted for this proposed change (Tr. 2579) we would, were it not for operating conditions, recommend the change.

We think that flexibility in operation afforded by the use of engineers between away-from-home terminals, i. e., between Tracy and San Jose, Tracy and San Francisco, as well as between the home terminal, Oakland and Tracy, via Niles or Martinez, and vice versa, should be maintained. It is true that two engineers from the Sacramento District who are in the Oakland pool to run out miles in the Western District owing to the stretch of road between Sacramento and Roseville (in the Sacramento District) are not used in any runs except between Oakland and Roseville and vice versa, and that those enginers are in that respect in the same situation as it is proposed to place the engineers in proposed pool #2 between San Francisco and Tracy. But only two engineers are there concerned. Futhermore, the flexibility desired by the Carrier is to use engineers who arrive at Oakland from San Francisco via Redwood Junction out of Oakland to San Jose or Niles or who arrive at Tracy from San Francisco to San Jose and Oakland. There is no such situation at Roseville because there are no runs from Roseville to other away-from-home terminal points. Using the two engineers from the Sacramento District as a sub-pool only between Oakland and Roseville does not so much affect flexibility. It only cuts down the number on the West Oakland Board available for the flexible service mentioned.

The Carrier opposes the proposed "little pool" because it claims that an unbalance would occur, for instance, at Tracy because engineers coming out of San Francisco under the proposal could not be used back to Oakland, but must after rest period await a run back to San Francisco, or be deadheaded back to San Francisco, whilst a first-out engineer would have to be deadheaded from Oakland to Tracy to take a train from Tracy to Oakland or Tracy to San Jose. We are not particularly impressed with the fact that this may mean extra cost to the Carrier in deadheading, if it would really benefit the engineers, but we are impressed with the fact that it would cause traffic delays.

The Organization suggests that such delays could be avoided by taking a rested engineer from the Western District at Tracy and running him back to San Francisco under Section 4 of Article 31 when there was not sufficient time to obtain an engineer by deadheading. Generally, in regard to carded trains, if there were no extra sections there would be time to get an Oakland engineer, but where traffic is released into Tracy by the Army or other industries feeding that terminal, which must move as an extra or as a second section of a carded run, there may not be sufficient time under Interpretative Question 1 and Answer of Section 5, Article 30. In such cases it is not without doubt whether under Section 4 of Article 31 an engineer from the big pool could be used to take a train into San Francisco or an engineer from the proposed "little pool" to take a train to Oakland from Tracy under the proposal without violation of the rules. If such could be done it might largely nullify one supposed advantage of the proposal.

We are of the opinion that the advantages gained by the Coast engineers would not offset the delays in traffic which would occur by the loss in flexibility of operation now enjoyed by the Carrier under the present rule.

This loss of flexibility when added to the doubt as to any net advantage to engineers from the Coast Division who would be used in the proposed "little pool" compared to the probable disadvantage to the engineers in the Western District makes us conclude not to recommend the adoption of the proposal.

We have not in this discussion given weight to the added financial advantage which the Carrier states accrues to the men in the present pool in the way of opportunities for obtaining two and three and four "baggers" for the reason that in normal times the men would simply run out their monthly maximum mileage sooner, although this itself would tend to give the men more time at home. Furthermore, if the majority of the men themselves have voted for the proposal, that majority must have been willing to forego such advantage. Nor have we given weight to the argument of the Organization that Coast District engineers are required to familiarize themselves with the trackage conditions in the Western District and that this lends to hazard of operation. This is one of the arguments that the Company makes in support of its opposition to the Organization's request contained in Item 17 of Case A-1371. We are not persuaded that becoming familiar with road conditions presents any real obstacle.

RECOMMENDATION:

The Board recommends that the proposed change in Article 31, Section 2, presented by case A-1594, be not adopted.

CONCLUSION

The Board appreciates the courteous cooperation accorded it by all parties in the effort to bring out all pertinent information necessary for the understanding of each case. The list of cases was long. Although some were designated as "Items" there were actually twenty-seven cases, each requiring independent hearing, study and decision. This long list of varied questions presents some general characteristics upon which the Board wishes to comment, with the hope that such comment may be helpful in future situations.

There was evident a tendency in some of the cases to seek a formal rule of wide application when the evidence showed only a few actual incidents even throughout a period of years. In such cases the Board feels that the request for a general rule was based upon too few actual occurrences.

In other cases it appeared to the Board that matters of minor importance were made the bases of requests for general rules. The matters which the proposed rules aimed to correct were hardly of sufficient importance to require formal rules. A number of comparatively unimportant matters in regard to which a rule was sought could, it appears to us, have been resolved by the development of a better spirit of cooperation between the Management and the Organization.

This long session of an Emergency Board, together with all the preparation which preceded the hearing, is too expensive, too cumbersome and too slow for the settlement of any situations capable of correction by compromise and agreement. It is to be feared that if resort is had too often to all the machinery of mediation and expensive hearings before Emergency Boards, for the remedy of comparatively minor difficulties, or seeming difficulties, or complaints, the whole procedure may suffer and perhaps eventually lead to less desirable methods or to the restricted use of these very useful agencies.

In another category was a group of cases which it might properly be feared could have been used to gain an advantage over a competing organization. Nothing will so contribute to the breakdown of the respect which has grown up for the procedure established by the Amended Railway Labor Act than for any organization to succeed in using it to gain a tactical or strategic advantage over a brother organization. The Brotherhood disclaims that any such objective was intended, but we must still insist that all requests which might even inadvertently tend to give an advantage in that regard be carefully avoided.

CERTIFICATION

The undersigned, members of the Emergency Board, making this report hereby specifically find and certify that the changes proposed by this Report are consistent with the standards as established by or pursuant to law, for the purpose of controlling inflationary tendencies.

JAMES H. WOLFE, *Chairman*,
GORDON S. WATKINS, *Member*,
A. G. CRANE, *Member*.

APPENDIX "A"—STIPULATION

It is stipulated that the Emergency Board designated by the Chairman of the National Railway Labor Panel on March 28, 1945, to convene at San Francisco, California, on April 18, 1945, and which did in fact convene at the designated place on the latter date, may proceed with the hearing and its subsequent findings and recommendations without regard to the expiration of the period of thirty (30) days from April 18, 1945. The Board may consume such time as it may find reasonable or proper, without regard to the number of days more than thirty (30) thereby taken.

Dated at San Francisco, California, May 15, 1945.

[S] GEORGE N. NAUS,
[S] G. W. LAUGHLIN,
[S] BURTON MASON,
[S] J. G. TORIAN,
[S] P. O. PETERSON.

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